

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

MAY 27, 2010 7:30 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Tim Hughes, Acting Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:30 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

TIM HUGHES: The Chair will call case No. 9880, 148 Larch Road. Anybody here waiting to be heard on that?

(No response.)

TIM HUGHES: Seeing no one -- you're not the Petitioner though?

UNIDENTIFIED MALE: No, I'm not.

TIM HUGHES: This case is going to continued. There's a letter in the file from Jo Ellen Gavin and Steven Weinstein.

"We respectfully request that our upcoming Variance hearing be rescheduled until 30, September 2010. We continue to work on" --

UNIDENTIFIED MALE: So we have to wait until September?

TIM HUGHES: That's not set yet.  
This is what they've asked for, I have to  
figure out --

SEAN O'GRADY: Fine with me.

TIM HUGHES: Is this a case heard?

SEAN O'GRADY: No.

TIM HUGHES: All right. So it's  
going to be the 30th of September.

The Chair would move that the  
continuance be granted as long as the  
Petitioner signs a waiver for --

SEAN O'GRADY: They've already  
signed, so we're all set there.

TIM HUGHES: Okay. And provided  
that the Petitioner change the sign to  
reflect the new date and time, September 30,  
2010 at seven p.m.

All those in favor of the continuance?

(Show of hands.)

TIM HUGHES: That's four in favor.

(Hughes, Sullivan, Scott, Heuer).

(7:30 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

TIM HUGHES: The Chair will call

case No. 9563. Anyone here to be heard on this matter?

(No response.)

TIM HUGHES: Is there a letter? Did we get a letter?

SEAN O'GRADY: Yes, there should be a letter in each one of them.

TIM HUGHES: There is a letter on file requesting a continuance of this matter on behalf of the Petitioners and the land owners Stonehouse Holdings, LLC. Please accept this request for another continuance to July 22nd this year.

And this is along with the letter Eric Wodlinger sent the notice in. Is July 22nd doable?

SEAN O'GRADY: Yes, July 22nd is filled up. After that for administrative reasons, I would suggest August 26th.

TIM HUGHES: Is this a case heard?

SEAN O'GRADY: Is that a case heard?

That is a good question.

TIM HUGHES: I don't know which piece of this case it is.

TAD HEUER: No, that's a re-file, isn't it?

SEAN O'GRADY: You know what, they're in P&S right now. It's supposed to wrap next week. I just wouldn't --

TIM HUGHES: I just have the transcript on the last time it continued.

TAD HEUER: This is Thursday, September 10, 2009.

SEAN O'GRADY: Okay, so that's not the original. It's been going on longer than that. It's not heard.

TIM HUGHES: Okay. The Chair would move that this case be continued until August 26th at seven p.m. providing of course that there's a waiver for the time to make a decision.

SEAN O'GRADY: There should be.

Upper left-hand corner should say letter of waiver.

TIM HUGHES: Letter of waiver. And that the sign be changed to reflect the new time and date.

You will communicate that to these people, right? Sean.

SEAN O'GRADY: I will.

TIM HUGHES: Thank you.

All those in favor of the continuance?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Scott, Heuer,  
Firouzbakht)

(7:30 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

TIM HUGHES: The Chair will call

case No. 9651, 12 Shady Hill Square. Is there anyone here on the last one?

(No response.)

TIM HUGHES: Same request has been made. The same form facsimile to continue this case. Again, we're going to continue to August 26th?

SEAN O'GRADY: Please.

TIM HUGHES: We move the case be continued to August 26th at seven p.m. provided that they change the sign reflecting the new time and date.

All those in favor of the continuance?

(Show of hands.)

TIM HUGHES: That's five in favor.  
(Hughes, Sullivan, Scott,  
Heuer, Firouzbakht.) (7:30 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

TIM HUGHES: The Chair would call

case No. 9934, 60 Ellery Street. Anybody here to be heard on this matter?

(No response.)

TIM HUGHES: There is a letter in the file from Alex Steinbergh as trustee of 60 Ellery Street, the owner of the referenced property. "I hereby request that the hearing in case, blah, blah, blah, be scheduled for May 27th be continued until a meeting date in September."

Do you want to be heard on whether or not we should continue this? No, okay.

The Chair would move that we continue this case to what date?

SEAN O'GRADY: We'll do September 30th on that one, too.

TRACY LINKLETTER: Can I ask a question? I'm interested in this matter.

TIM HUGHES: Sure.

TRACY LINKLETTER: Why -- I mean, there was no notice given. As of 15 minutes

ago, there was no notice of potential of continuance and people have come.

TIM HUGHES: Okay, I'll read the rest of this letter then.

MARY BETH LAWTON: Yes, I have the same concerns.

TIM HUGHES: "This will give the Building Commissioner a chance to rule on our request of May 25th to issue certificates of occupancy for the nine residential units located at the property. In addition, medical matters and vacation are expected to make me unavailable from June 18th until the beginning of September."

TRACY LINKLETTER: Well, I understand that, but it's in his interest and it seems like the Building Commissioner's ruling would be moot absent or ruling by the Zoning Board.

SEAN O'GRADY: May I address that?

TIM HUGHES: So, you're basically

here arguing against a continuance?

TRACY LINKLETTER: Well, I mean it's an inconvenience for citizens who obey the signage that come and represent their interests. We're here. It puts us at an inconvenience to come. Maybe we were afforded the same consideration if we can't attend the next meeting?

TAD HEUER: The problem is it's his petition, so he can say I want to be there, I don't want to be there. He's the one asking for the relief.

MARY BETH LAWTON: You know, may speak to this? The problem is he's operating in defiance of the Zoning Board regulations which say that there are to be four units there. And the petition before the Zoning Board is that the argument for the petition is that the Zoning Board hasn't enforced the fact that he has nine units there instead of four.

TAD HEUER: So the Zoning Board --

TIM HUGHES: If we're going to argue about the continuance, I think you should probably come forward and identify yourself for the stenographer so this becomes a matter of record. And we're discussing whether or not we should continue.

MARY BETH LAWTON: I'm Mary Beth Lawton. I'm a professor at Lesley University and I reside at 54 Ellery Street, and 60 Ellery Street has been really the bane of my existence since I've lived there for a variety of reasons. And there are numerous problems with this property. There are numerous problems that affect the neighbors and I'm really concerned about this issue and I -- my intention is to carry it throughout the political system in Cambridge.

TIM HUGHES: Sean.

SEAN O'GRADY: The Zoning Board isn't responsible for enforcements.

TRACY LINKLETTER: Who is?

SEAN O'GRADY: We are at the Building Department. The Building Commissioner is now aware of this.

TRACY LINKLETTER: Excuse me, why wasn't he aware of it before? It seems like it's been on the books for an extremely long period of time.

SEAN O'GRADY: Well, I can't speak to the details of this case because I wasn't aware of it, but we're not aware of every, you know, violation that goes on to the city until it's --

TRACY LINKLETTER: You're not aware of every finding of the Zoning Board?

SEAN O'GRADY: We're aware of every finding, yes.

TRACY LINKLETTER: The finding you're saying you were not aware of.

SEAN O'GRADY: Sir, I'd rather not argue with you, but let me just inform you.

TRACY LINKLETTER: I'm just a confused citizen, I'm sorry. I want to address it.

SEAN O'GRADY: I just wanted to make a point that the Board doesn't do the enforcement, the Building Department does. The Commissioner is aware of this. You can certainly come to the Building Department and speak with the Commissioner.

TRACY LINKLETTER: But doesn't it seem that the proper forum which was noticed was this forum, and that basically what's happening to a citizen is that he's being gained by some bureaucratic non-communication.

SEAN O'GRADY: This is just not the correct forum. If the man does not show up for his zoning case and wishes to have it continued because he's waiting for a finding from the Commissioner, then it's not mature for this Board to do anything about it.

TRACY LINKLETTER: But what about the citizens that come out? Where are their rights?

MARY BETH LAWTON: Yeah, why does the Building Commissioner have power to defy the results of the Zoning Board? Why does the Building Commissioner have the power to defy the ruling of the --

SEAN O'GRADY: You need to contact the Building Commissioner. His name is Ranjit Singanayagam. He's available right across the street at 831 Mass. Ave.

MARY BETH LAWTON: What's his name again?

SEAN O'GRADY: Ranjit, R-a-n-j-i-t. He's available Monday through Friday business days. He will be very responsive to your concerns, trust me on that. And know that he's actively pursuing this. I know this is an inconvenience, but this Board is not inconveniencing.

TRACY LINKLETTER: But I don't understand, this Board is meaningless then.

TAD HEUER: No, all right, I'll step in.

TIM HUGHES: We can make a ruling but we don't have an enforcement power.

TAD HEUER: We cannot enforce.

TRACY LINKLETTER: But what's being said is, even though you've made three rulings --

TAD HEUER: We cannot enforce.

TRACY LINKLETTER: I understand. In spite of the fact that you've made three rulings --

TAD HEUER: You need to go to the Building Inspector and complain that he's not enforcing our rulings. And if that doesn't work and the Petitioner decides to come back before us on his continued case, which you've heard several times tonight he has the right to continue whenever he wants, unless we

think he's not continuing --

TRACY LINKLETTER: But don't the citizens have any right? No right?

TAD HEUER: Not if he is a petitioner in front of the Zoning Board. Only if this is the limited situation --

TRACY LINKLETTER: Can I make a petition?

TAD HEUER: Do you own a property?

TRACY LINKLETTER: A citizen can't make a petition with respect to another property?

TAD HEUER: Not to the Zoning Board.

TIM HUGHES: No.

TAD HEUER: Only a petitioner who owns property who has an interest to the property can come to the Board for relief, we grant relief.

TRACY LINKLETTER: Then to whom do I make an objection of -- I mean, if the City Council passes a law --

TAD HEUER: You want to talk to the Building Commissioner --

TRACT LINKLETTER: -- and no one enforces it, do I go to the police?

TAD HEUER: You need to go talk to the Building Commissioner. They enforce the Zoning Ordinance. We provide --

TRACY LINKLETTER: This is of no concern to you?

TAD HEUER: We provide relief from the Zoning Ordinance.

MARY BETH LAWTON: My understanding from this case that Healy gave him permission to be in violation of the law.

TAD HEUER: We know nothing about any of this.

TIM HUGHES: We don't know anything about that. And this is actually of no concern to me until this case gets opened and it's not opened right now.

MARY BETH LAWTON: (Cross-talking

at the same time.)

TRACY LINKLETTER: Well, I think that this is a wrong way to proceed. I understand it is the way to proceed.

TIM HUGHES: Your right as a citizen is to show up when the hearing actually takes place.

TRACY LINKLETTER: Will it be continued to a time of my convenience if I can't make the continued time?

TIM HUGHES: Not specifically.

TRACY LINKLETTER: So this person can continue it until such time as other people are exhausted and will not object, is that the rule?

TAD HEUER: You need to go and speak to the Building Commissioner if you're concerned about the enforcement.

TRACY LINKLETTER: No, no this is the rule of the Zoning Board not the Commissioner.

UNIDENTIFIED MALE: This is their procedure.

TRACY LINKLETTER: I imagine this is being continued, isn't it?

TIM HUGHES: Well, we haven't taken a vote on it yet.

TIM HUGHES: Can you identify yourself for the record?

TRACY LINKLETTER: Yes, my name is Tracy Linkletter. I'm an abutter but I'm a much more concerned Cambridge citizen that, A, three decisions of this Board are not enforced. And that the system is rigged so that people who own property can gain the system to exhaust their objectors and convene meetings at their convenience --

TIM HUGHES: I think the appropriate forum for that is to take your complaint to the enforcement body which is the Building Department. And then second to that is write this up for the newspaper.

TRACY LINKLETTER: I'm going to do that.

TIM HUGHES: I mean we don't -- I don't really want to hear an editorial right now.

TRACY LINKLETTER: I will take it to the City Council.

MARY BETH LAWTON: Get rid of everybody.

TIM HUGHES: Can you identify yourself, please?

STAVROS MACRASTIC: I think I -- my name is Stavros Macrastic (phonetic) I'm also a direct abutter across the street from this property. I sympathize with my neighbors' concerns, and may I ask how long has the Building Department been aware of this situation, officially aware of it?

SEAN O'GRADY: I've been aware of it since he filed this case.

STAVROS MACRASTIC: Okay. How long

ago was that?

SEAN O'GRADY: Weeks ago.

STAVROS MACRASTIC: I mean, the sort of Solomonic answer is fine, you can have your continuance, but in the meantime, you know, we request, you as a -- you don't have enforcement power, you can certainly write a letter to the Building Department saying we request that you enforce the existing situation of the four units until it's changed. I mean, I know that has no legal value, but I think it has political value.

TAD HEUER: But I believe that the Petitioner has now, at least according to his letter, he has gone to the Building Commissioner and affirmatively asked for a ruling from the Commissioner; is that correct?

TRACY LINKLETTER: But I don't understand. You made the ruling. Is the Building Commissioner allowed to overrule

your decisions?

TAD HEUER: All right. That's it. That's it. No. I have told you several times that it is the Building Inspector who enforces. The Zoning Board grants relief when relief is requested by a Petitioner. You cannot come in and request relief unless you are a property owner or have an interest in the property. If you don't like what we have done years ago and you have a timely appeal, you can appeal it. Otherwise for enforcement of our rulings, you must go to the Building Inspector. If the Building Inspector says I will not enforce it, then you come back to us and we will hear an appeal of the Building Inspector's determination. You have to start with the Building Inspector, you must. You cannot do anything in front of us right now.

TRACY LINKLETTER: I just want to understand. He wrote a petition before you

to be heard, but he's postponing that because he is going to go to the Building Commissioner to get him to void your previous rulings?

TAD HEUER: He's going to make a request. We have no way to understand what the Building Commissioner's going to do. But that is, quite frankly --

TRACY LINKLETTER: (Interrupting.)

TAD HEUER: That is quite -- quite frankly that is the appropriate --

TRACY LINKLETTER: (Interrupting.)

TAD HEUER: Excuse me.

MARY BETH LAWTON: Can he void your ruling? That's the question. Can he void your ruling?

TAD HEUER: You're using words like void that don't mean anything legally in this context. He enforces our results.

MARY BETH LAWTON: Yes.

TAD HEUER: So the Petitioner is going to go to him, apparently according to

his letter, and ask for a ruling. That Building Commissioner presumably will give a ruling. Citizens can go to the Building Commissioner and ask him to enforce our previous rulings, and he will listen to you as well.

STAVROS MACRASTIC: Maybe we should write letters to the --

TRACY LINKLETTER: Why does a citizen have to ask that the city government on its citizens' behalf enforce the rulings that its bodies make?

TAD HEUER: Because this is a huge city, sir, and there are many things that we try to do because we're human and we cannot always do.

TRACY LINKLETTER: No, no.

TAD HEUER: This is now to the attention of the --

TRACY LINKLETTER: Wait. So this is a big city for the police, too. If

someone's mugged and it's and a finding is made --

TIM HUGHES: I'm afraid that it's an irrelevant analogy.

MARY BETH LAWTON: It's the law. That's the law.

TRACY LINKLETTER: It's not the law. Your decisions are not the law. I take it this is the not law. Your decisions are not the law. We've got some other body can void your decision; is that correct? I just want to know.

TIM HUGHES: I don't know.

TRACY LINKLETTER: There's no yes/no answer to that?

TAD HEUER: We've tried giving you answers and you're having an argument with us. We're saying legally we are precluded from doing anything at this point because the petitioner is not in front of us. He's asked for a continuance. We can grant it or not.

Our practice is almost always to grant a continuance when it appears that there is good faith reasons for it. He has said that he's going to be away. He said he has medical issues. He said he's going to speak with the Building Commissioner. That's usually -- that's two more reasons than we usually get from most people to say I would like it just for my convenience.

TRACY LINKLETTER: But his reason is to go get your decision voided.

TAD HEUER: His reason is to go and speak to the Building Commissioner who shall enforce if he feels like enforcing and shall not --

TRACY LINKLETTER: So, he gets to do decide whether he feels like it.

MARY BETH LAWTON: Is he an elected official?

TAD HEUER: His job is to enforce -- no, he's appointed.

MARY BETH LAWTON: Is he elected?

TAD HEUER: No, he's an appointed official, Ma'am.

MARY BETH LAWTON: By who, Healy?

TAD HEUER: He's appointed by I believe the City Manager? Or the City Council.

TIM HUGHES: Yes.

MARY BETH LAWTON: (Interrupting.) From Healy. And Healy has already told Alex Steinbergh that --

TAD HEUER: That is not in front of us.

TIM HUGHES: We're not talking about that now.

TAD HEUER: That's not in front of us.

MARY BETH LAWTON: We haven't heard a word from Alex Steinbergh.

TAD HEUER: That's wonderful, but it's not in front of us.

TIM HUGHES: This discussion is limited to whether to grant the continuance or not. We're not getting into the merits of this case, and I don't care what you heard when and where --

TRACY LINKLETTER: My question is --

TIM HUGHES: It's irrelevant to us right now, all right?

MARY BETH LAWTON: I have on word of --

TRACY LINKLETTER: It's not about the merits of this case, it's a matter of procedure.

TIM HUGHES: Procedurally --

TAD HEUER: The appropriate procedure --

TIM HUGHES: -- we give continuances upon the request of the petitioner.

TRACY LINKLETTER: I'm talking about continuances, I'm talking about your decisions.

TAD HEUER: But that's all that's in front of us right now.

TIM HUGHES: But we're talking about the continuance. This is the only discussion on the table right now. I opened the discussion up to discuss whether you're in favor or opposed to a continuance.

TRACY LINKLETTER: I'm asking about the process. I'm just asking.

BRENDAN SULLIVAN: Your simple question was can the Commissioner overrule our decision? The answer is no.

MARY BETH LAWTON: No?

BRENDAN SULLIVAN: The answer is no.

MARY BETH LAWTON: No. Thank you.

BRENDAN SULLIVAN: He cannot. Wait a minute now. Now, should the Commissioner fail to act on a ruling --

TRACY LINKLETTER: Yes.

BRENDAN SULLIVAN: -- then the procedure is for the citizen, any

citizen -- well, again, you may not like this, but to write to him and ask him why it has not been enforced? You then get a response from him. This is the procedure that you really have to follow.

You then take his response, it may be not to your liking, whatever it is, and then you can either appeal that decision based to us. It has to come back then to us. You can appeal a Commissioner's dec -- but you've got to get something in writing from him.

TRACY LINKLETTER: Why would I come back to you only to have somebody go back to him and say void the decision that you just made in my favor.

BRENDAN SULLIVAN: What he -- Mr. Steinbergh is asking the Commissioner --

TRACY LINKLETTER: I'm not talking about that. I'm not talking about the merits of this case. I'm talking about the process.

And you're telling me that the Commissioner doesn't enforce your decision, I have the right to go ask him to tell me why. When I don't like what he says, I come to you, you make a decision in my favor that he should have enforced it and then he doesn't enforce it. Where do I go after that?

BRENDAN SULLIVAN: I would think the City Council.

TRACY LINKLETTER: Well, I think I'm going to skip a few steps. I will give this man -- what's his name again Ranjit?

SEAN O'GRADY: Ranjit.

TRACY LINKLETTER: What?

SEAN O'GRADY: Ranjit.

TRACY LINKLETTER: Can you spell it?

SEAN O'GRADY: R-a-n-j-i-t.

TRACY LINKLETTER: Okay. And what's the rest of his name?

SEAN O'GRADY: Singanayagam.

TRACY LINKLETTER: Singanayagam.

TIM HUGHES: The information is available on the city's web site. He's the Building Commissioner for the City of Cambridge.

TRACY LINKLETTER: You serve on the Committee --

SEAN O'GRADY: If you would allow the Board to just move on, I'd be glad to come and talk to you, okay?

MARY BETH LAWTON: Can I just ask, are you elected or appointed?

TAD HEUER: We're appointed.

TIM HUGHES: Appointed.

MARY BETH LAWTON: By the City Manager?

TAD HEUER: By the City Council.

MARY BETH LAWTON: Oh, man. That explains it all.

TIM HUGHES: Oh, that's clear to you, huh?

MARY BETH LAWTON: That's clear to

me.

TIM HUGHES: This is a volunteer position. We do this twice a month as volunteers. We don't get paid to do this and you think there's something wrong with that, that we're appointed rather than elected.

MARY BETH LAWTON: (Inaudible.)

TIM HUGHES: This conversation is over.

All those in favor of granting the continuance?

MARY BETH LAWTON: The gentleman at the end of the table gave me a straight answer.

MAHMOOD FIROUZBAKHT: Sean, a question for you.

SEAN O'GRADY: Yes.

MAHMOOD FIROUZBAKHT: How long do you think it's going to take for the Building Commissioner to review this request for a further --

SEAN O'GRADY: I don't know. I can't speak for him. What's you're thinking.

MAHMOOD FIROUZBAKHT: Well, I I'm looking at this because of vacation reasons and medical reasons, I understand that. But I'm not quite sure what the other pieces are in terms of what needs to be dealt with from the Building Commissioner. But I mean it's kind of like buying time. I mean, we're talking about four months.

SEAN O'GRADY: This has been going on since the seventies I think.

TIM HUGHES: The earlier decision 1978.

THOMAS SCOTT: So if we deny the continuance tonight, what's the process?

TIM HUGHES: Well, there is no process. The Petitioner is not here. We can't proceed without the Petitioner.

MAHMOOD FIROUZBAKHT: Yes, we can.

TAD HEUER: Sure, we can.

TIM HUGHES: We can?

MAHMOOD FIROUZBAKHT: We can deny him and then --

BRENDAN SULLIVAN: He's in no rush to judgment, let's put it that way.

THOMAS SCOTT: If we deny the continuance --

TAD HEUER: But the appropriate procedure is to go to the Building Commissioner, and in the first instance the Building Commissioner enforces -- quite frankly if he were here in front of us, I would say do you have a ruling from the Building Commissioner to the contrary that you're appealing? I don't think you're coming back to us legally asking us for a new ruling from our Board overruling an old ruling of the Board. I think it's an enforcement decision of the Building Inspector that is neither enforced or not enforced. I'm not even sure

this has a right to be in front of us right now until the Building Inspector makes a decision.

MAHMOOD FIROUZBAKHT: I'm not quite sure I follow that. If we're given a ruling that we deem that this is not a nine unit building and a four unit building --

SEAN O'GRADY: We really can't talk merit with the quorum.

MAHMOOD FIROUZBAKHT: Okay. Let's talk dates then. If the Building Commissioner -- and that being the case, if this is mature right for us to consider and the Building Commissioner makes a ruling, is it really going to take until September for him to make a ruling on this? And quite frankly I don't want to inconvenience, you know -- well, let this go on because of vacation schedule.

BRENDAN SULLIVAN: When is our next open date, Sean?

SEAN O'GRADY: July 8th.

BRENDAN SULLIVAN: Can we push him to July 8th?

TAD HEUER: Sure.

BRENDAN SULLIVAN: I think rather than ascending to his request, then I think we need to drag him up here.

TAD HEUER: That's fine.

MAHMOOD FIROUZBAKHT: And quite frankly, you know, Mr. Steinbergh I think would be able to get able counsel if he personally can't show up himself.

THOMAS SCOTT: I'm in favor of that, too.

TAD HEUER: That's fine.

TIM HUGHES: Absolutely.

BRENDAN SULLIVAN: And I would relay that message to the interested people that, you know.

SEAN O'GRADY: Okay.

TIM HUGHES: The Chair would move

that this case be continued until July 8th at seven p.m. provided that the Petitioner signs a waiver allowing extra time for the decision. And change the sign to reflect the new time and date.

All those in favor of the continuance?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Scott, Heuer, Firouzbakht.)

TIM HUGHES: What if he doesn't sign the waiver?

BRENDAN SULLIVAN: What's the running date on this thing, anyway?

SEAN O'GRADY: Variance heard within 65 days of filing. And the filing date is April 15th. April, May, June 15th. June 20th. It won't be okay.

THOMAS SCOTT: Do we need to move it back to June?

SEAN O'GRADY: Well, you know, maybe

prudence is warranted in this case given  
the --

TAD HEUER: Interest?

SEAN O'GRADY: Interest, yes.

TIM HUGHES: We're taking back that  
motion? Amend it?

MAHMOOD FIROUZBAKHT: Amend it.

THOMAS SCOTT: The availability at  
the end of June?

SEAN O'GRADY: I said the beginning  
of June. June 10th.

TIM HUGHES: All right.

TAD HEUER: Was the original motion  
voted on?

TIM HUGHES: Yes, it was. Do we  
amend it?

TAD HEUER: We have to move to  
reconsider.

BRENDAN SULLIVAN: So moved.

TIM HUGHES: Second.

THOMAS SCOTT: I second it.

TIM HUGHES: So now do we have to vote to rescind the original one?

TAD HEUER: Yes.

TIM HUGHES: The Chair would move that we rescind the original motion.

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Heuer, Scott, Firouzbakht.)

TIM HUGHES: And the Chair would move that we continue this case until June 10th, that the Petitioner provides all that was put in the original motion.

MAHMOOD FIROUZBAKHT: As a case not heard.

TIM HUGHES: Yes, as a case not heard, correct.

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Heuer, Scott,  
Firouzbakht.)

THOMAS SCOTT: And based on not  
exceeding the 65 days from the filing, right?  
That's why we're changing it.

SEAN O'GRADY: Yes. I mean, we can  
change it -- yes.

MAHMOOD FIROUZBAKHT: And obviously  
the Building Commissioner should be on notice  
that his decision probably should be by then.

SEAN O'GRADY: Absolutely.

BRENDAN SULLIVAN: Bells and  
whistles will go off.

(7:55 p.m.)

(Sitting Members: Tim Hughes, Brendan  
Sullivan, Tad Heuer, Thomas Scott, Mahmood

Firouzbakht.)

TIM HUGHES: The Chair will call case No. 9935, 238 Main Street. Anyone here to be heard on that matter?

Could you identify yourself, please, for the record.

ATTORNEY ANNE MALONE: My name is Anne Malone of Prince, Lobel, Glovsky and Tye on behalf of Clearwire.

As the Board may know from previous applications that Clearwire has filed, Clearwire is an affiliate of Sprint and they are in the process of launching a fourth generation mobile broadband network nationwide which provides -- which will provide high speed access to its customers. And where possible they're using existing sites for the buildings or towers where they have a facility already and upgrading that with a WiMax technology which allows them to provide the internet access. At this

particular site what we're proposing to do is to add three panel antennas to be mounted on the existing penthouses, and there's a screen wall on the rooftop of the building and two wireless backhaul dish antennas which would also be side mounted on the existing three walls and painted all antennas -- and the dishes would be repainted to match the facade which they are mounted on. And in addition to that they are proposing to add one GPS antenna and one supporting equipment cabinet which would be located on the existing seal equipment platform on the rooftop which is behind in this case a screen wall.

They -- Sprint actually has six antennas or actually has zoned for six antennas when they initially put up their installation, and so there are three Sprint antennas that will remain and three of those were the Sprint antennas had been initially now the Clearwire panel antennas will be

located in those locations on new mounts which are more flatter against the building and less, you know, protruding.

MAHMOOD FIROUZBAKHT: Stealth design?

ATTORNEY ANNE MALONE: Yes, stealth design. I can answer any questions.

TAD HEUER: How many WiMax antennas do you expect that Sprint is going to need to completely cover Cambridge?

ATTORNEY ANNE MALONE: I have actually our engineer here.

TIM HUGHES: Please identify yourself.

ANOOP JARKUMAR: My name is Anoop Jarkumar. I'm representing Clearwire today and I'm an engineer.

TIM HUGHES: You want to spell that, please?

ANOOP JARKUMAR: Anoop, A-n-o-o-p, Jarkumar, J-a-r-k-u-m-a-r.

And how many facilities we need to cover Cambridge?

TAD HEUER: Yes. I presume this is going to 4G. Is this 4G?

ANOOP JARKUMAR: Yes.

TAD HEUER: So, how many -- essentially another way for the question is, how many times are you going to be before us asking for a new 4G antenna somewhere in the city? You know, how many of these do you expect to need to blanket Cambridge?

ANOOP JARKUMAR: So far we have 14 planned in the city.

TAD HEUER: 14?

ANOOP JARKUMAR: Yes. But we have, there might be some area because the initial plan that we're going to launch end of this year. So we're going to begin with 14 sites. And I don't have exact number to give you that, you know, if I want to cover whole

Cambridge, I might need more, a few more, I just don't know right now.

TAD HEUER: And is that -- these are kind of -- for lack of better phrase, these are generating antennas, not backhaul antennas?

ANOOP JARKUMAR: They're two backhaul and three panel.

TAD HEUER: Okay. So, is that a package that's necessary for -- is that a combination of upgrading existing antennas and adding them and things?

ANOOP JARKUMAR: No, we are actually -- Clearwire is going to do a totally wireless broadband service. This is a totally new service. So right now at this location Sprint has identified there. Second Sprint has been approved for future growth that they have with our regular men there giving up that location. That's how we're putting in our antenna there. And the

dish we're putting for high speed internet, because on the regular wireless we can use even, but, you know, on the data network we need a lot more bandwidth. With that bandwidth we need more dishes. Each user will be wireless internet, will be doing a video conferencing, e-mail, everything, you know. Each user might be using approximate one resources compared to the regular wire network that can go and support like hundreds of users.

ATTORNEY ANNE MALONE: The answer is yes. They're using the backhall dishes and they're operating the network wirelessly, and that allows them to do that. The dishes allow the antennas to work. So they're a package in that sense. So I assume that's your question.

TAD HEUER: Yes. I guess my other question is usually when we've had backhall dishes come before us, they're backhalls that

are line of site to another facility.

ANOOP JARKUMAR: Yes, they are the same.

TAD HEUER: Okay. But in terms of a line of sight, are any backhalls merely relay dishes? So allowing a signal to go from its generated location to the --

ANOOP JARKUMAR: To the other location?

TAD HEUER: Yes.

ANOOP JARKUMAR: So it's, yeah, it is doing that really and it's very narrow beam so it's just point to point. It transferring back and forth.

TAD HEUER: Right.

And then do you have a Tab 4 in your package? If I can borrow it. So I think this is the map in Tab 4. And you have a notation that's says "Proposed sites" and then "future sites." One's proposed sites are in red and future sites are in yellow.

Can you explain the difference between a proposed site and what future site is?

ANOOP JARKUMAR: Proposed site is the one for today which is the Main Street.

TAD HEUER: Okay.

ANOOP JARKUMAR: And then the future sites are the one I told you the 14 sites planned in the Cambridge at this point.

ATTORNEY ANNE MALONE: The reason they're future is because the network is not online yet so they're just not operating.

TAD HEUER: Right. So I see nine sites that look -- this is essentially Cambridgeport, East Cambridge up to about just north of Harvard. So that's nine in what looks like the eastern third of Cambridge. Are you expecting, when you said you're expecting 14, that the other two-thirds of Cambridge are going to be many fewer dishes? Because the difference in my mind between 14 of these installations and 21

and 25 of them is pretty substantial.

ANOOP JARKUMAR: The more dense when you see it's probably it's because of the dense area, a lot of higher buildings. So that's why you see it. And then there might be some area in Cambridge to see there are a lot of suburban areas out there, you know? And the site to cover more compared to the more urban environment.

TAD HEUER: Right.

And then this green area, the reliable coverage area --

ANOOP JARKUMAR: For this site, yes.

TAD HEUER: That's what you would get if we did approve this at this point?

ANOOP JARKUMAR: Yes.

TAD HEUER: Is there a map in here of what the current coverage is?

ANOOP JARKUMAR: There is no current coverage.

TAD HEUER: There is zero coverage

for that location? Okay.

ANOOP JARKUMAR: We will be launching the end of this year.

TAD HEUER: And is this your first site in Cambridge?

ANOOP JARKUMAR: No, I think we have been approved for a few.

TAD HEUER: For 4G?

ANOOP JARKUMAR: Yes.

TAD HEUER: And are those places that are not on this map; are they north of Harvard Square or west of Harvard Square?

ANOOP JARKUMAR: They are -- I can bring them up on the laptop to bring you the town map.

TAD HEUER: The question is I don't see any existing sites on this map.

ANOOP JARKUMAR: There is no existing sites. All of these are in the process of the zoning or in the construction. So there is none of the sites right now.

TAD HEUER: Okay, so there are some sites that we've approved but are not yet operational?

ANOOP JARKUMAR: Yes.

TAD HEUER: Right? Do you have a sense of which those are on this map roughly?

ANOOP JARKUMAR: I can give you -- let me get my laptop.

TAD HEUER: Sure.

BRENDAN SULLIVAN: I guess, Tad, where you're going with this line of thought is -- and Ms. Malone, you may cue in on this, too, that going forward, because we have a tendency to get these things piece meal, and then all of a sudden we look back and all of a sudden they're like mushrooms in a field all over the place. But your line of thought is that you would, going forward, we would like to see obviously what you're proposing but also what is existing, whether it be approved, not in operation or in operation.

So we want to see how many mushrooms, I guess, dot the landscape for your client. And because we're getting a little apprehensive about this piece meal application. And I understand the technology advances as you've got to stay up with the technology and you have to keep upping some more equipment, but I guess -- is that --

TAD HEUER: Yes.

BRENDAN SULLIVAN: -- sort of where you're going with it. We would like to see an overview of your client, what they have in operation, what is coming online even though it hasn't and what is proposed.

ATTORNEY ANNE MALONE: In terms of coverage -- or like for instance, this map has the dots of future sites. You're saying you want it more comprehensive in terms of the entire City of Cambridge you want to include it or just showing the coverage from each state whether it's up or not?

TAD HEUER: I would like to see the entire City of Cambridge, so where you think you need to position these in order to get maximum coverage. And then if possible, some indication of why this is the minimal number of sites you need to get the maximum amount of coverage. Or if it's more than the minimum number, the reasons or the exceptions why it should be there. For example, there aren't enough tall buildings to site it where ideally you would put it. Or you asked that building owner and they flatly refused and you had to find an alternative site. So something that shows why anything above the perennial optimal array of antennas is possible. And then how the individual request fits into that, you know, jigsaw puzzle for you. Because not only do we have individual antenna coming up for individual carriers, but then we have other carriers who are obviously looking at what you're doing,

I presume you're looking at what they're doing to see what buildings work for them. And whether they can come in and ask for those buildings as well because they've seen that they've gone through the Board once and have some nominal seal of approval for an antenna versus no antenna. Because what we're seeing is that people will come and look at a building and say that building has a bunch of antennas on it, it must be open for lots of antennas. We're trying to figure out what these arrays look like across four or five different carriers instead of having them come on a one-by-one basis. And having to make a decision based on a single carrier, single point coverage on a single map.

ATTORNEY ANNE MALONE: Okay. What you're asking is still only for our --

TAD HEUER: Yes.

ATTORNEY ANNE MALONE: I mean obviously we can't --

TAD HEUER: Yes.

ATTORNEY ANNE MALONE: I just want to make sure.

BRENDAN SULLIVAN: And then what we'll probably do if you catch all of this together in a sense, but for us it's getting nervous time that we can't see the forest for the trees.

ATTORNEY ANNE MALONE: Really, just so I make sure we're right in the future. This map is okay in terms of indicating what's around there, but you want it just to be a broader scope of our sites in Cambridge proposed that we know of at the time. And then some kind of indication of why we couldn't -- you know, we have to have this amount of sites.

TAD HEUER: Sure, if there's overlap in coverage areas for instance. So, here you have this site in MA Boss 6175-A. If, you know, I'm looking at MA Boss 5084-A which it

looks like it's on Blanch Street, which I would imagine if it has the same kind of coverage array that 6175-A has, there might be, just looking at this overhead, there would be overlap. I presume that the reason it would need to be there is because there's a building in the way so that precludes coverage to the north and that's why it has to be so close to this one. But some kind of indication as to why there's a clustered array here where as normally you would look like you try to spread out as many as -- as few as possible across the largest amount of the network. Maximum coverage while minimizing installation.

ATTORNEY ANNE MALONE: That makes sense. If there is overlap why do we need it there?

TAD HEUER: Right.

ANOOP JARKUMAR: I checked and there are three or four sites that are zoning

approved but none of the sites in construction at this point. They are maybe in the building permit stage.

TAD HEUER: Okay.

And are those in this area?

ANOOP JARKUMAR: Yeah, there's one, 5084.

TAD HEUER: Is that Sidney Street. Is that 20 Sidney?

ANOOP JARKUMAR: 10 Fawcett Street.

ATTORNEY ANNE MALONE: That's still in the process.

ANOOP JARKUMAR: So I can, you know, give a map which will show the -- whatever of our coverage from future sites and then this site, you know, but do you need individual sites coverage?

ATTORNEY ANNE MALONE: I think I understand. You're asking -- he wants -- they just want to know why are we having this so close to this. Because

there's something blocking it from going the other way. So in the future we are -- we'll show the coverage on future sites even if they're not on air.

ANOOP JARKUMAR: So you need to see the coverage from future sites and the proposed sites?

TAD HEUER: Yes.

ANOOP JARKUMAR: Without future sites?

TAD HEUER: And without prejudice to the future sites to lock you in. So we get a sense of density of coverage and a sense of coverage both of coverage of antennas and coverage of service.

ATTORNEY ANNE MALONE: We can do that.

MAHMOOD FIROUZBAKHT: The 14 sites that you mentioned, give or take, are they -- do you know if they are all or mostly existing sites which you would add to or

changing or are they new sites?

ANOOP JARKUMAR: I think in Cambridge most of the sites are existing. Up to 90 percent. There might be one I have to look into.

TAD HEUER: Okay.

TIM HUGHES: Is this kind of overview something that you would need to see before we proceed with this individual case?

TAD HEUER: No, I think I'm okay with this case given the extent of coverage that this particular antenna appears to provide relative to the locations of the proposed antennas. And also that there is an existing site and it appears it's been minimized on the structure to the extent possible. So no, I don't think I would need it for this particular application.

MAHMOOD FIROUZBAKHT: When do you expect the 4G network to be up and running?

ANOOP JARKUMAR: At the end of this

year.

MAHMOOD FIROUZBAKHT: End of this year?

TIM HUGHES: Any other questions? Is there anyone here that wants to be heard on this matter?

(No response).

TIM HUGHES: Seeing no one, I will close public testimony.

Special Permit as you know, there are certain provisions that have to be adhered to according to footnote 49. So I would just ask you to kind of verbalize those particular things starting with the Board of Zoning shall consider the scope of limitations imposed by a license secured by any state or federal agency having jurisdiction over such matters. I suppose evidence of the proper licensing is in this packet.

ATTORNEY ANNE MALONE: Yes, that's Tab 7.

TIM HUGHES: And the Board of Zoning Appeals shall consider to the extent that the visual impact in the various elements of the proposed facility is minimized. You spoke to that a little bit and the rest is if you can speak to that again.

ATTORNEY ANNE MALONE: Yes. All the antennas would be facade mounted on the existing structures on the rooftop of the building and will be painted to match the facade of whatever structure they are mounted on. Also the equipment cabinet is screened behind an existing screen walled.

TIM HUGHES: And since this is a -- I know it's a mixed kind of a zone area, but it is partly residential. So you need to demonstrate that non-residential uses predominate in this vicinity.

ATTORNEY ANNE MALONE: Just verbally?

TAD HEUER: Or if you have maps.

TIM HUGHES: Do you have pictures? Pictures are good. Here they're worth a thousand words.

BRENDAN SULLIVAN: In the photo simulations one picture is probably worth a thousand words.

TIM HUGHES: Yes, there are a couple there.

BRENDAN SULLIVAN: Kendall Square.

ATTORNEY ANNE MALONE: The second picture, the photo location map shows that it's located at the end of Main Street and there are I think the Marriott Hotel and I think several office buildings surrounding the building.

TIM HUGHES: Any other questions from the Board? Any other discussion?

The Chair would move that a Special Permit would be granted to Clearwireless, LLC for 238 Main Street for the described array of antennas for upgrading to fourth

generation. So that's what 4G stands for.

He Petitioner has demonstrated that it holds all the proper permits and licensing. That they've taken into consideration all the elements of footnote 49 and 4.32, footnote 49. And that Special Permit can be granted. The applicant has met all the requirements set forth in Section -- like I said, in Section 4.32.49.

That traffic generated and patterns of access and egress would cause congestion, hazard or substantial change in established neighborhood character. That the continued operation or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

Because it has already been in use for telecommunications. This is just an upgrading of the system.

That nuisance or hazard would not be

created to the detriment of the health, safety and welfare of the occupants. Once again, because it's already an existing site and this is just an equipment upgrade. Shouldn't change anything there.

And the proposed installation will not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance.

Am I missing anything? All those in favor of granting the Special Permit?

BRENDAN SULLIVAN: And that should the equipment --

TIM HUGHES: And should the equipment become obsolete, that it will be removed and the state of the building return as closely as possible to its original state.

All those in favor?

(Show of hands.)

TIM HUGHES: That's five in favor. Permit is granted.

(Hughes, Sullivan, Heuer, Scott,  
Firouzbakht.)

ATTORNEY ANNE MALONE: Thank you.

(8:20)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

TIM HUGHES: The Chair will call case No. 9936, 1100 Mass. Ave. Is that you?

ATTORNEY ANNE MALONE: Yes.

TIM HUGHES: Is there a letter in the file?

ATTORNEY ANNE MALONE: Yes.

TIM HUGHES: It's a letter for the Petitioner to continue this case?

ATTORNEY ANNE MALONE: Yes.

TIM HUGHES: The letter is to request a public hearing scheduled for May 27, 2010 regarding the applicant's application for a Special Permit to install a wireless communications facility at the property be continued to the next available public hearing date.

Do we have a list? "The applicant is requesting a continuance in order to improve

the design of the facility and ensure such improvements also meet the requirements of the applicants's radio frequency engineers."

What do you have for an open date?

TAD HEUER: I appear to have July 8th.

TIM HUGHES: The Chair will move that this case be continued to July 8th on the provision that the Petitioner sign a waiver for the time limit to reach a decision, and that the sign be altered to reflect a new time and date, July 8th at seven p.m.

BRENDAN SULLIVAN: Have you signed a waiver, Anne?

ATTORNEY ANNE MALONE: I believe we did.

TIM HUGHES: I don't have note on here that the waiver was signed. I didn't look through the whole file. But you can check with Sean before you leave to make sure there's a signed letter in the file. We got

it. It's done.

All those in favor of a continuance?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Scott, Heuer,  
Firouzbakht.)

(8:20 p.m.)

(Sitting Members: Tim Hughes, Brendan

Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

TIM HUGHES: The Chair will call case No. 9937, 13-15 Avon Street. Is there someone here to be heard on this matter?

Please identify yourself for the record.

MARK BOYES-WATSON: Mark Boyes-Watson from Mark Boyes-Watson Architects, 30 Bowes Street, Somerville.

UNIDENTIFIED FEMALE: We can't really hear.

UNIDENTIFIED MALE: Can you speak into the microphone?

TIM HUGHES: No, the microphone's are not on. The microphone system in here is tied to next door, and there was a meeting in there earlier next door, and we couldn't use the microphone then. Check next door and see if they're finished.

SEAN O'GRADY: We're fine.

TIM HUGHES: Turn them on and see if they work. Sometimes it goes pop, pop, pop.

GUY ASAPH: I'm Guy Asaph, 29 Hopedale in Allston.

TIM HUGHES: Before you get started.

GUY ASAPH: Yes.

TIM HUGHES: I have a lot of letters here that suggest that maybe you haven't talked to all your neighbors.

GUY ASAPH: Well, I've been canvassing the neighborhood for six weeks. I've met with 1, 2, 3, 4, 5, five plus Harvard and Harvard owns six properties, so we certainly have more than a majority of the abutters and abutters to abutters, but some houses I went back to three times. I did leave business cards for people that I did meet with and asked them to please distribute them if anyone had questions. I had scheduled some meetings with some abutters. And they had invited neighbors that could not

attend, and I did leave instructions with the Building Department. There's only one number, it's my cell phone, and anyone that called should feel free to call me on the cell phone. So it's been five or six weeks.

UNIDENTIFIED MALE: Can you speak into the microphone?

TAD HEUER: They've just now been turned on.

TIM HUGHES: I'm looking at a bunch of -- before we get into the merits. I'm looking at a bunch of communications here; one's asking for a reschedule. One's not an opposer or in favor, just saying they would have liked to see the plans for the improvements to the property. There's at least four letters of that same kind of ilk. And I'm wondering if you need more time to talk to these people or do you want to go ahead tonight knowing that there's a lot of questions about the project that haven't been

answered by your abutters and neighbors.

GUY ASAPH: Well, I have made myself available. And I think the one person there is a -- one of my competitors frankly who offered on the property himself, and everyone knows where to find me if there are questions. So I would feel prepared to go ahead with the hearing.

TIM HUGHES: Okay. There will be a time for public testimony.

UNIDENTIFIED FEMALE: Related to that point I live across the street.

TIM HUGHES: There will be a period in the hearing for public testimony. So everyone will get a chance to be heard.

First they will present. We'll ask any questions we have. It will be open up to public testimony. You can voice your opinions, ask questions, we'll find out everything we can.

UNIDENTIFIED FEMALE: Well, it's

related to your point because I live across the street and I haven't been communicated with.

TIM HUGHES: These letters sort of suggest that. But the petitioner is willing to go ahead in spite of the possible opposition.

Go ahead.

GUY ASAPH: Okay. Just to try to give a brief overview of the existing property and our plans, I'm sorry we don't have a stand here, but I think the photographs can pretty much explain what the property is and what we're looking to do.

It was built in, I think, 1869. It had at some point been converted to a two-family and been added on many times for the last 25 years. It's been used as a dormitory for seminary students. And so the interior of the house really is very much like the exterior of the house. They've converted

living rooms to bedrooms and dining rooms to bedrooms and there's nothing to save inside. The street presence of the original house is clear. And I think the back of all the additions year after year kind of speak for themselves. Additionally, the side was added numerous times, including the third floor shed dormer into the mansard.

So what are -- all of this is non-conforming by the way. It's within a foot of the side property line. So what we wanted to do is make this property conforming and do it as an as-of-right project. Knowing that would require significant demolition, we started with Historical and met with Charlie Sullivan several times, asked his opinion. We've worked with him many times in the past on other properties. He went out and reviewed the property and reviewed our plans several times, and his opinion was nothing in this back is worth saving, and

nothing on this side elevation is worth saving. What he would love to preserve is the original house. And that's our intention in our development plan, to take off the aluminum siding, replace the vinyl windows and restore the original house. And then add on the two additional units to complement it.

This is another perspective on the side elevation that's non-conforming. And I think if you look in the site plan, that also helps explain quite a bit. The heavy dotted line is the existing building. Sections of it were three stories on the addition in the back. What we wanted to do is make it conforming, relocate that square footage into a conforming addition. So this is the proposed footprint, all of which conforms to the existing zoning.

We have a very unusual lot in this L shape as you can see, which is completely

unbuildable. There's a 50 foot -- 15 foot front yard setback and 35 foot rear yard setback, and it's 50 feet. So that's a hardship in when we get to the issue of setbacks. Because if that square footage was distributed, we could work a little more easily although we're not asking for very much relief.

The -- this is a street view of the structure. This is the existing house where nothing changes. And this is the addition that's setback. This is a side elevation showing that the addition is only two stories, 24 feet or so, and where it could be 35. So, asking about the existing elevations, nothing changes on this elevation on this side of the house. Nothing changes on the front elevation of the house.

THOMAS SCOTT: You're restoring everything, right?

GUY ASAPH: Yes.

This section -- I'll refer you to the side photograph. This one, that shed dormer comes into the mansard roof around here. So once we can -- and also the additions are all sticking out all along here. Once that comes down, there's nothing here at all. So on our plan we have a roof deck, but we told Charlie we would be willing to rebuild the mansard roof just as a false roof so that for most elevations it appears the same. And this window does nothing, it's just to the roof deck.

This is a new bay that's added and a new window. Again, that's where the building is demolished off the edge.

The rest of the addition, again, two stories and set well back, I think it's about 14 feet setback in this proposal where it's currently a foot from the property line.

I guess if we addressed the non-conformities -- there is a corkboard and

a concrete block garage at the front of the property which in itself is non-conforming, but we're taking that down entirely. We're not intending to touch any of the large trees there. The driveway kind of works its way around.

This existing non-conformity will all be gone with the approved demolition from Historical. So what we're left with that separates the project as an as-of-right project to what exists now is the existing building. And the non-conformity is about six inches of the front porch roof that is in the front yard setback and the peak of the roof. The height of this house is 37 feet and a couple of inches. And so because its above 35 feet and it's six or seven inches in the front yard setback, those are the only reasons that this is a non-conforming property. We could say well, we'll just cut the two feet off the roof and cut the six

inches off the porch and why are we here? But we're here because I've worked with Charlie Sullivan for 25 years and when people ask well how will the restoration be? It will be exactly what Charlie wants me to do. And we've done eight or ten. We've won historic preservation awards from the city. You can see in this picture, you're looking at the top of the mansard, you can't see the peak that we want to take down. It's not visible because how it tilts back to the mansard to the point of the center, it's not visible from most areas. Charlie has asked us to preserve that because the roof line on any mansard he feels is very important. And he's also asked us to keep -- exactly keep the front porch because that's original, not original house that we're trying to preserve.

So, our hardship for these two minor pieces is the desire to preserve the historic house, although this is not in a historic

conservation district, which we'll try to work with those guidelines and with Charlie.

That said, on the advice of the Building Commissioner when we did a plan review, he said well, why don't you ask about this and this, too. So we added two other things which we think enhances the project. But if the Board felt that was asking too much, that's not a problem. The current interpretation at Inspectional Services is that -- well, not their interpretation, the ruling is a bay can be into the side and rear yard setback if it's less than 25 percent and this and that. These bays all conform to the definition of a bay except for the Building Department's interpretation that it can't be a bay if it has a foundation underneath it. It needs to be cantilevered. We're asking relief in order to put the foundation underneath that bay. I mean, we're talking about three feet of foundation. And there

are a couple of reasons:

One, it's consistent with the existing building which has its bays.

Second, from a practical term having built this way many times before, it's a -- you've got cold air under there, it's tough to insulate. Worse, it's where the windows are and you want to put your hot air right out in that bay. And then trying to get the air duct out into the bay with the structural things with the cantilever, it really creates structural difficulties, not that it can't be done, but we also wanted it to be consistent with the existing house.

So that's the one side yard setback relief. And then finally was the FAR the floor area ratio. The existing property is 100 square feet larger than it's allowed to be and we were asking for that extra 100 square feet as well. And we're asking for it, and we've tried to highlight just key

places. The front porch, which if we just took the whole roof off the porch, it wouldn't count as FAR and the setback issue would be gone. But we don't want to do that. So we're asking for that 45 feet back.

The design has two doors close together so it has kind of a large porch there as well. And then finally, inside this unit there's a two-story staircase that you're looking up. So it's -- there's nothing there, it's air space, but it does count as square footage because theoretically something could be built over it in the future.

So, I guess we're asking for two different relief issues:

One is to preserve the historic building, the height and the six inches on the front porch.

The second is for these -- the 100 square feet of FAR and the setback for the bays.

I guess I have -- it's kind of moot in this, but I've always been asked to bring shadow studies. And this is south and the sun moving this way, all the shadows are cast in this direction. So I know I have some concerns from neighbors here, but their concerns should not be for sunlight. And I guess these are all Harvard owned properties. I met with -- I can pull her name out of the card, but somebody in the real estate department, I give her several plans and explained it. And she said this is lovely. I have no opposition to this. But I'm not Harvard University. She was going to pass several other sets of plans around and she said if anyone had questions or concerns, I can count on hearing from them. But she said don't hold my breath. Harvard doesn't really comment very much. So there are all the abutters across the back. And I think that's it.

TIM HUGHES: Okay.

GUY ASAPH: Thank you.

TIM HUGHES: Questions from the Board?

BRENDAN SULLIVAN: The setback violations, let's start there. You have the rear, the existing building down 48 feet and then you're putting on the bays and that brings it to 35 feet; is that correct? But yet it's not a violation because that's within the existing Ordinance.

GUY ASAPH: The rear yard.

BRENDAN SULLIVAN: The rear yard.

GUY ASAPH: Okay. The rear yard setback is 35 feet to the house.

BRENDAN SULLIVAN: To the house. And the Ordinance requires 35 feet.

GUY ASAPH: Right.

BRENDAN SULLIVAN: But the bay --

GUY ASAPH: The bay is exempt. The bay would conform if it did not have a

foundation under it.

BRENDAN SULLIVAN: Right.

GUY ASAPH: And we're asking to be allowed to put a foundation under it. And I think by current interpretations, that would mean we're in violation of the rear yard setback.

BRENDAN SULLIVAN: So that brings the rear setback down to 32.75.

GUY ASAPH: That's what it says.

BRENDAN SULLIVAN: Okay. On the left side the existing is 26 feet and the requested is nine feet.

GUY ASAPH: Oh, yes, I'm sorry. And this is conforming. That's the sum of 20.

BRENDAN SULLIVAN: Yes. And -- but is that not existing now or is it not?

MARK BOYES-WATSON: No, that's new construction.

GUY ASAPH: This is new construction.

BRENDAN SULLIVAN: That's new.

Okay.

TAD HEUER: You said there's going to be a carve out in the mansard roof toward the back for a roof deck?

GUY ASAPH: On the third floor. It shows it on the floor plan I think.

TAD HEUER: Right.

GUY ASAPH: Where that deck is was where the shed dormer cut into the building. So once we take that shed dormer out, there's nothing left up there.

TAD HEUER: So where's the opening for that deck? Is it just --

MARK BOYES-WATSON: Just that one door that you see -- it's that door from the stair out to the deck.

TAD HEUER: Oh, sorry. When I'm standing on the deck, what do I see?

MARK BOYES-WATSON: This is open. You look that way only south basically.

GUY ASAPH: Straight to the rear yard.

TAD HEUER: So I look over the Harvard properties into the quad?

MARK BOYES-WATSON: Exactly. Exactly. And the mansard roof is maintained on both the left and the right side which is why that deck doesn't show -- in order to see -- you've cut a section through here and you would see it.

TAD HEUER: Is the mansard maintained around the mechanicals?

MARK BOYES-WATSON: Yes.

GUY ASAPH: That was again why we wanted to preserve the roof line every way we could.

TAD HEUER: Is it also maintained on the, I guess, the north side coming around?

MARK BOYES-WATSON: It's actually rebuilt, because that's the bit that is now the three-story piece.

TAD HEUER: I guess my question is, is there a mansard corner on both sides? So obviously there is one where it comes on mechanicals. Is there a mansard corner coming around here or is it cut?

MARK BOYES-WATSON: It's coming around a couple of feet, yeah.

TAD HEUER: It's a right angle cut on both sides?

MARK BOYES-WATSON: Yes.

TAD HEUER: Moving toward the west.

MARK BOYES-WATSON: It's actually more like five feet. In fact, if you look, you can see that the rail on the drawing, you can see the graphic for the rail, that's the extent of the rail.

TAD HEUER: Okay.

TIM HUGHES: Any other questions from the Board?

THOMAS SCOTT: So, the roof above the deck is missing in this elevation.

MARK BOYES-WATSON: That's correct.

GUY ASAPH: Yes.

THOMAS SCOTT: But the mansard is intact?

MARK BOYES-WATSON: Exactly.

THOMAS SCOTT: All the way around?

MARK BOYES-WATSON: Exactly. So that upper corner slide that you see in the photographs, it will be maintained consistently.

THOMAS SCOTT: Consistently around.

MARK BOYES-WATSON: Except for the deck rail.

THOMAS SCOTT: And it runs in and back out again?

MARK BOYES-WATSON: Exactly.

THOMAS SCOTT: Okay.

GUY ASAPH: If I could just make a quick -- one other thing I just wanted to mention was our concern was always making the addition be subservient to the main house.

One, it's set way back, you're looking down the driveway, it's only two stories, it's not really visible. But a key element that defined a lot of the setback issues were the garages and yes, we could have pulled these garages forward, no problem, and created a much larger open space here, but if we did that, this goes to the question of how the roof turns, we would lose this corner of the original mansard and we wanted to keep the original -- the corners of the original house intact. But, you know, that decision does kind of lead to everything else if you push here, you have to pull there.

TAD HEUER: And then for the entry into the garage, so you have a winding driveway that takes out the carport that goes around the large pine tree in the corner; is that right?

GUY ASAPH: Correct.

TAD HEUER: Is this sufficient

turning radius for these cars to back out and front out? Or are they backing out into the street?

GUY ASAPH: No, no, no, they're front -- going out to the street nose first.

TAD HEUER: Okay.

TIM HUGHES: Any other questions from the Board?

MAHMOOD FIROUZBAKHT: On the building height to the existing height is above the ordinance requirement?

GUY ASAPH: Correct.

MAHMOOD FIROUZBAKHT: And you're proposing to not change the building height?

GUY ASAPH: Correct.

MAHMOOD FIROUZBAKHT: Why do you need relief on that?

MARK BOYES-WATSON: The relief -- the relief is that if the, if the structure is non-conforming, so were you to leave as proposed the front porch in the

setback and the peak of the roof two and a half feet above the height limit, it renders the house non-conforming and it requires that in order to build your as-of-right underlying zoning as is proposed plus the 100 feet, you need to come and talk to the Board. So that's why. So were we to take those elements off, we wouldn't be required to come here. But because we're trying to leave them on and keep the original fabric of that front house intact, it brings us here. Does that make any sense?

TAD HEUER: Well, that's right except for the fact that you would still need to come to us for setback relief and FAR relief for the additional second half.

MARK BOYES-WATSON: Right. And as you can tell from Guy's presentation, that they're sort of minor relief and we probably wouldn't have come for that relief were we not here anyway. But both of them do

improve -- well, one of them, you know, the 103 feet, it's 103 feet I think not 100. 103 feet proves, I mean, it's great for the project and the porches, getting those porches on as Guy described. And obviously the setbacks is that technical issue and the historical issue on how bays were built on these types of houses.

GUY ASAPH: I don't want to confuse you. The only reason we're asking for those is because we're here anyway. So, if the Board felt it's too much to ask, I think it enhances the project but that's not wagging the dog.

TAD HEUER: So there's no as-of-right relief --- there's no as-of-right project you could do unless you took off the roof of the porch and cap of the roof?

MARK BOYES-WATSON: That's exactly correct.

TAD HEUER: So there's no building that could proceed --

MARK BOYES-WATSON: You can do a ten percent addition.

TAD HEUER: Right.

MARK BOYES-WATSON: Right.

TIM HUGHES: Further questions from the Board?

THOMAS SCOTT: So is there an FAR increase?

GUY ASAPH: There is 100 square feet.

MARK BOYES-WATSON: Increase over zoning. Not an increase over what's there now.

THOMAS SCOTT: That was my question.

MARK BOYES-WATSON: Right. The existing building is that size. And the new building is the same size as the existing which is 103 feet larger than zoning allows.

GUY ASAPH: Much as I would have

liked to ask for 200, there had to be some rationale.

TIM HUGHES: Anyone else?

THOMAS SCOTT: And the 100 feet is related to the bays, right?

MARK BOYES-WATSON: No, it's not actually. That's only -- my graphic is confusing.

THOMAS SCOTT: Okay.

MARK BOYES-WATSON: That setback, that's the setback relief --

THOMAS SCOTT: Setback. So it's the blue area?

MARK BOYES-WATSON: Right. And actually, that area, the 103, it's that project. It's illustrative. If you look at the two porches, they're almost exactly 100 square feet. Truthfully, you know, you can't say this bit is the 103.

THOMAS SCOTT: I gotcha.

MARK BOYES-WATSON: We highlighted

those bays to indicate that -- the foundations of those bays require -- force the requirement for setback relief.

THOMAS SCOTT: Okay.

TIM HUGHES: Good? I'm going to open it up to public testimony. Did you have one more comment?

GUY ASAPH: Well, maybe not exactly germane but if I could, addressing my developer friend in town who commented on my other projects I did -- when I met with the neighbors, did show them other projects that were both restored historic houses. This one is on Trowbridge, this one's on Broadway, to give them an example of the same. I mean, we do a lot of landscaping. It's all copper, slate, stone walls. On this house there was really trouble. This was the original one. All of it -- many of the porch rails and many of the major brackets were destroyed. There were one or two in place. We took those two

and brought them to a millworks and had them milled exactly the same. We just don't buy something that looks nice. It's actually restoring it. So, this was an example to some of the neighbors and to anyone that had any inquiries about other work that I've done whether through Historical or through me for examples of what this project would be like.

TIM HUGHES: Okay. I'm going to open this up to public testimony. If you have comments and concerns you have to come forward and identify yourself for the record, please. Why don't we start on the right-hand side.

RONALD AXELROD: My statement, I'm here to speak in opposition to the proposal. My name is Ronald Axelrod. I live at 26 Shepard Street which is approximately 200 feet from the proposed development. I've lived there for over 33 years with my wife and I want to itemize the objections that I have.

First, the developer wishes to increase the existing single-family lot density of the lot and therefore neighborhood to three family dwellings. The intent of the Zoning B District is to keep the density of lot to the level that exists and the street network and parking that can accommodate it. This development goes against the long-held neighborhood agreement and intent of the Zoning District B, Residence B. The footprint of this proposed development is more akin to a C-2 Zone than a B Zone. With the garages included, this is a very big footprint and building complex.

Second, the large building development does not include the enclosed garages and basements in their building square foot calculation. These spaces add approximately 2200 square feet of additional volume or over 40 percent additional building volume on the site. Basement spaces often

become additional living space as attested by one bathroom, basement bathroom in the southwest unit. Basements are defined in the Zoning Ordinance as, quote, basement and cellular areas devoted to operations of maintenance of the building heating and cooling equipment, electrical and telephone facilities and storage. These additional spaces further erode the intent of the Residence B Zone District when they become part of the dwelling unit.

Third, parking is a continuing issue in our neighborhood. As there are not enough on street spaces for neighborhood occupants. With three highly priced luxury three-bedroom townhouses on this lot, most likely there will each be two car families adding another four cars to the neighborhood on the streets. Also, many garages in the townhouse units are used for storage as they do not have enough storage in the townhouse

units thereby adding additional cars to the neighborhood streets.

Fourth, the design of the parking cars creates a small parking lot on the side of the house. This is clearly not the intent of a Residential B Zoning District nor is the character of the houses along Avon Street.

Fifth, hardship. The Zoning Ordinance Section 10.31 itemizes the reason for hardship. I do not see how increasing the number of units, adding 40 percent additional building volume not included in the FAR, additional cars to the neighborhood, and creation of off street parking lot rise to the level of hardship. This development is hardship on the neighborhood and neighbors.

And sixth, the applicant does not own the property. I don't know the legality of this, but can this -- can he apply for a Variance without ownership?

I want to thank you for your

consideration of these objections to the development that would further deteriorate the residential character of our neighborhood. Thank you.

LINDA CHIN WORKMAN: Hi everyone, I'm Linda Chin Workman. My husband and three children and I have lived at 16 Avon Street directly across the street from this property for 12 years. We also own 18 Avon Street, a rental unit that's on our property. It's a two-family. I'm here this evening primarily to get information.

The first I heard of this project was the note that was mailed to us which my notes are scribbled on. I think we're formally abutters living across the street. We're the home that in the shadow drawings shadows seem to fall on.

Our streets are multigenerational, family neighborhood. On one end is a school, Graham and Parks School. There's a lot of

foot traffic. My kids go to school there. A lot of their friends go there. There's street traffic from busses and people dropping their kids off to school. I just think there should have been discussion with neighbors about many things: Density, changing the use of the house from a one group occupancy to three units, traffic, impact of traffic, the quality of neighborhood, parking on the street which is already very limited. I'm quite annoyed and disrespected that this communication is taking place for the first time here in this hearing.

GUY ASAPH: I tried to --

TIM HUGHES: Let's not get into a side bar discussion here. Let's just let her have her piece.

GUY ASAPH: Sorry.

LINDA CHIN WORKMAN: And that communication with Harvard and the Historic Commission, Charlie Sullivan who I have known

for years and who I certainly respect, but that the neighbors who live in the neighborhood have seemed to be disregarded. So I'm speaking for myself but also for the neighbors who I think are all here this evening because we feel that there has not been appropriate communication. And that we have to come this evening away from my family and home, and so You Think You Can Dance to be here this evening to preserve the quality of the family life that makes our neighborhood and living here so special.

UNIDENTIFIED FEMALE: Can I ask a point of fact?

TIM HUGHES: Maybe.

UNIDENTIFIED FEMALE: I'm curious, you said it was used for students prior to this?

TIM HUGHES: It's owned by the Society of Jesuits that used it basically as a dormitory space.

UNIDENTIFIED FEMALE: How many people have been living in the house then?

TIM HUGHES: I would say it was substantially more than what you would call a single-family residence.

GUY ASAPH: Twelve. And I believe there were six cars.

UNIDENTIFIED MALE: Two cars. At the moment there are six people and sometimes there are eight people.

TIM HUGHES: The question was addressed to us. You're going to get a chance to speak momentarily.

FRANK KRAMER: Hi. My name is Frank Kramer. I live at -- I've lived at Seven Avon Street with my wife and children for over 20 years. Our home is half of a two-family home built in 1857. It's a two-family home. We live on the -- I guess it's called the south side of that house. We have several reasons for strongly opposing the Variance request.

What I noticed by the way is that the Historical Commission seemed only to be concerned about what it looks like from the front, but we live on the side. And that's where the real detrimental impact on the neighborhood can be felt. We did meet with Guy Asaph -- oh, by the way, we brought this photograph of what the view is like from our backyard now. There's a fence between the unit to the -- facing right of our home. And this is what would be seen from that same vantage point were this project to be constructed. And it's proportionalness (sic) in space and distance. That's the way we had it made.

UNIDENTIFIED MALE: Except the scale --

TIM HUGHES: I'm sorry. If you want to speak, you're going to have to identify yourself.

UNIDENTIFIED MALE: Sheffield --

TIM HUGHES: But not now.

FRANK KRAMER: He'll clarify this scale.

TIM HUGHES: Not now.

FRANK KRAMER: So one of the primary reasons for our buying our home was the green space between us and the property at the rear as well as to the right. We were delighted when the close relationship that easily developed between us and our neighbors resulted from a removal of a fence that divided our yards. The result was an opening up of a corridor of greenery and open space that can be seen over the fence as far down Avon Street almost down to the Graham and Park School on Linnean. Currently there are no garages, no parking lots, no buildings of any kind that interrupts that view.

We and our neighbors believe that the character of our neighborhood is partially defined by this openness and that if built,

the proposed project would be substantially detrimental to that character.

We also believe that the increased building density that this project is bringing will be detrimental to our neighborhood.

Finally, I must emphasize the current severely limited amount of on street parking which already has been referenced. This will be aggravated further by the extra vehicles that inevitably become three high-end condos. Our lawyer advises that the law forbids a Variance for this project and that those what it's allowed is very clearly stated and requirements of the code are not met. So we request that it not be granted.

I want to further say that we did meet again, I want to say we did meet with Mr. Asaph but we were presented with a better complete. He said there was nothing to be

done when we asked about options. No, no, no. I can't say that if Ms. Chin Workman had met with Mr. Asaph, that it would have resulted in a happy resolution. Thank you.

TIM HUGHES: Thank you.

FRANK KRAMER: I'll leave this so it may be referenced by further.

BOJANA BOSANAC: My name is Bojana, B-o-j-a-n-a Bosanac, B-o-s-a-n-a-c and I live almost across the property in question in condominium building, 10 Avon Street. And my husband and me have been living there for over 20 years, and we love this neighborhood and we love Cambridge and we feel strongly about this project. So I basically put down what's my opinion about it and I'll read it. It's not long.

"I feel that the house should be brought back to its original state which is to be a single-family house for two reasons:

First reason, to keep the stability and

balance in the neighborhood. We already have plenty of condominiums on the street and not enough single-family homes.

Condominiums have higher turnover rate which is good for real estate business, but not so good for the neighborhood.

The second reason is to preserve healthy balance between built and unbuilt green areas. The proposed Variance will do neither. It will increase the number of condominiums on the street and will decrease green areas in the neighborhood, and both of this will have negative effect which I believe on the community. So, therefore, I am against the proposed Variance.

And basically I have to say with respect to parking problems, that there's already been mentioned and it's not here, but I definitely agree that that will be a problem.

TIM HUGHES: Anyone else?

CHUCK KRUMROY: Hi, my name is Chuck

Krumroy, K-r-u-m-r-o-y. I live at 10 Avon Street. I think that by the audience that you've drawn here tonight for this hearing, you can tell the level of interest that this project has generated in the neighborhood. I think that you're correct in assuming that it also reflects a huge disconnect between the petitioner and the neighborhood. A lot of us have never been contacted before, never had an opportunity to sit down and discuss options with the developer, and so we're forced to come here tonight. I won't go through all the iteration -- reiterating everything that other commenters have said because I don't want to take up any more time than is necessary, but the ballooning quality of this structure is caused, as a previous commenter has said, by the unrecognized footage that is occupied by garages and basements. And if the petitioner were to actually go back to the drawing boards and

come up with a far more sensitive solution that could reduce the volume of that envelope and the way it creeps south toward the left-hand side of the property and the way it creeps back into what is currently open space, I think he might find a far more amendable audience and get a far better reception.

TIM HUGHES: Thank you.

MARNEY CLIPPINGER: My name is Marney Clippinger and I live at No. 9 Avon Street which is the property immediately abutting the property under discussion. And I need to read this because I will forget what I'm talking about if I don't and I'll give you a copy.

"Sheffield van Buren and I live at No. 9 Avon Street which is a two-unit condominium comprised of 7-9 Avon Street. Our house immediately abuts the proposed development. Our front door, along with seven of the 15

windows of the house faces 15 Avon Street. Our patio and kitchen which is where we spend most of our time, overlooks the trees and the garden door. It is a lovely view. A peaceful oasis and it provides us with a sense of wellbeing, winter, spring, summer and fall. I have lived in this house for 30 years. When we originally bought the property, one of its strongest selling points was its backyard which provided a rare sense of open green space in the middle of the city. There was a garage in the backyard behind No. 7, which we, with the previous owners took down in order to increase the size of the garden. When Frank and Joan Kramer bought the unit at No. 7 twenty years ago, we collectively decided to take down the fence that separated our yards to further enhance the open expanse.

Over the years our backyards have gradually morphed into lush gardens. Last

year Sheffield and I took down some towering pine trees in the west end of the properties in order to bring more sunlight in. And we made a major investment of labor and money in re-landscaping the garden. During the summer weather permitting, we spent most evenings and weekends outside sitting on our patio and looking north. You could just barely see the house next-door. Mostly it is trees and open space for as far as the eye can see from the north view from my property.

Should Mr. Asaph be granted the Variance he has requested and be permitted to undertake this development, our bucolic existence will come to a crashing end. Instead of looking out our kitchen window at trees and a house which is perhaps 50 feet away from where we are sitting, we will be facing three garages with cars coming and going all hours of the day and night. Sitting out on the patio where we now see

trees and open expanse, we will be looking at the it 24-foot side of the two-story building slash garage nine feet from the fence. If this ill-conceived massive development is allowed to proceed, what we hold most sacred about living in this house will be destroyed.

When Mr. Asaph came to slow us his plans, he made it very clear that his sole interest is in financial gain. And he has less than no regard of the feelings of the neighbors about what he plans to do. When asked if he would consider building two units instead of three, he replied that he would not be able to make enough money. When asked if he would consider moving the garage further back from my property line, he said, and this is a direct quote, "No. This is my house. I don't tell you what to do in your backyard and you're not gonna tell me what to do in mine."

GUY ASAPH: That's not true.

MARNEY CLIPPINGER: I'm sorry,

there are witnesses. Frank and Joan Kramer have heard this.

"We have consulted legal counsel and we have been told that there's nothing about this lot that would justify a Variance. We also understand that a Variance should not be granted unless there's some characteristic of the property that precludes the use of the land in accordance with the Zoning laws. We hope that this is true and that the Zoning Board will see fit to deny Mr. Asaph permission to proceed with this project."

TIM HUGHES: Thank you.

Anyone else? Step forward, please, sir, and identify yourself for the record.

SHEFFIELD VAN BURON: My name is Sheffield van Buron. I live at 9 Avon Street with Marney Clippinger. And just before I read my statement I just want to clarify the scale of this, because the way the computer was formatted. This represents -- the fence

is six feet high. And this structure is 24 feet high. So the -- if you make -- that's two and three and four would take you up here. So the roof height of this structure is up here. So this is at half scale. The lower part of this image -- this image is at half scale to this. And it would block from this side of the photograph all the way to this -- the entire, this entire view would be blocked by this element of the designer. We measured it out carefully.

So, and the other comment I wanted to have is there are three decks. And part of the issues are around privacy, and there would be the potential of us being in our backyard with a number of people looking down on us. So at the moment there's not that possibility.

"To members of the Board of Zoning Appeal: If Central Park in New York is considered the lungs of the city, offering

visual and emotional respite, then the green belt of which our backyard is a small segment is our Central Park. Until now this unique and historic corridor has been preserved by a tacit agreement among the land owners on the block. It creates a sense of tranquility and wellbeing not only for us, but those across the street who benefit from the low density of development that allows them visual access. We have spent countless hours, effort, dollars, to be good stewards of this land; an effort that is greatly appreciated by our abutters. We hope whoever buys the property at 15 Avon Street will pay homage to and enhance this precious and unique space for the benefit of the entire neighborhood. Unfortunately the present proposal by Guy Asaph does much to destroy."

Thank you.

TIM HUGHES: Thank you.

JOAN SULESS KRAMER: Hello, my name

is Joan Sules Kramer (phonetic), and I live at 7 Avon Street with Frank Kramer, the other side of the house that we share with 9 Avon Street and, yes, this is what we see now and this is what we'll see in the future if this project goes ahead. And a little bit -- I'd like to talk a little bit about the privacy issue, too. I mean, this is a deck here. And although it -- you made the point that people are looking north towards the Harvard buildings, it's hard to imagine that if somebody was sitting in it, they wouldn't also be looking in the direction of our yard as well. So, this deck and the other deck that's further along the line of the addition will also be looking down my yard which is a major, major loss of privacy for us. We're really sorry that a design would be developed on such a massive and invasive scale. This is not a small renovation project. This is a major construction project with loss of

green space, with hard topping of an area for driveway. And we're also losing grass and we're creating more runoff into the street with no absorption of grass.

Those are, I guess, my major points. I just hope that you will take into account that the real hardship in this situation will be for the owners, our house in particular, and other people in the neighborhood. And to change up the density in the neighborhood to this degree seems to unnecessary and very sad.

Thank you.

TIM HUGHES: Thank you.

Anyone else?

RALPH ERICKSON: I'll be very brief because basically I just wanted to -- I am sorry, Ralph Erickson. I'm at 10 Avon Street across the street from this building.

I concur with everything that's been said here tonight. The one thing that I just

want to emphasize is the changing of the character of the neighborhood, the density of the population, and I really -- one of the things that I've appreciated in the 16 years that I've lived on that street is the fact that this is a very quiet street overall. And adding, you know, making this into a three-family and fairly large units, I just don't see that this is going to do anything other than increase noise levels, especially with outside decks. I know that there have been a number of people living in this house, but quite frankly most of the time I'm not even aware that anybody lives in that house. That's how quiet it is at the moment.

And I also just want to go back to what the developer said about the cars driving out of the garages nose first. That assumes that there's only going to be three cars in the driveway at any time. If I look at the drawing and imagine that, for example, a car

is parked here and this car is driven in, there's no way that they're going to be able to go out except if there is two cars parked in front of the garage which is quite likely I think, that they're going to have to back out. And I'm concerned about the fact that there are a lot of children that walk on that street and the extra traffic that this is going to create.

Thank you.

TIM HUGHES: Thank you.

LAUREN HOLLERAN: I'm Lauren Holleran (phonetic), 73 Prospect Street. I'm not a neighbor or an abutter or have any -- I will not be impacted by this project, but I have seen a couple of Guy's other projects and just wanted to speak to the integrity of the building. It sounds like there's a perception that the bedside manner could have been much improved in the communicating of the design, but I see a lot

of real estate in Cambridge and there are a lot of developers who take many shortcuts to save a lot of expense. And there are many buyers who don't realize the different levels of workmanship that there are. And I get offended by bad development in terms of it's a waste in some ways and it's really nice to see good building. This is -- I'm not speaking to the scope of the project or even the requested Variances, but just if it were in my neighborhood, I would be glad that someone with the integrity of Guy in terms of construction would be doing the work.

TIM HUGHES: Anyone else? Step forward, please.

LISA GLOVER: My name is Lisa Glover. I live at 10 Avon, No. 5, I'm on the third floor. So I would look over, look across. And one of the reasons I bought my condo five years ago was beautiful views, lots of trees. I've heard that the intention

is not to take down any trees, but I don't have a guarantee of that. And Guy may do lovely buildings, but I'm here because I think he's chosen the wrong neighborhood. I think three garages, luxury condos, it doesn't seem like the neighborhood that I live in, and it makes me really unhappy.

And I think everything else has been said here. I'm very worried about parking spaces. With condos going up at price point, people are not going to have just one car. And I also want to stress that while there is a group living in that building now, they're seminary students and they're incredibly quiet. And there are only two cars for everybody. So it will be a massive change. Thank you.

TIM HUGHES: Anyone else?

LINDA CHIN WORKMAN: Are we allowed to say something again?

TIM HUGHES: Are you going to say

something that hasn't been said?

LINDA CHIN WORKMAN: Yes.

TIM HUGHES: And I'll be the judge of whether it's been said or not.

LINDA CHIN WORKMAN: I'll pretend I'm my husband who's home with my children, and he's recovering from surgery so he may be watching. So Linda Chin Workman again from 16-18 Avon. I don't know if you've heard from the neighbors to the abutters on the other side. That property is currently for sale and the owner is in California I believe. So I just want to add a new point which is that decisions that you will be making would set possibly a bad precedent that might affect the quality of the neighborhood and would affect how that property, which is also across the street from my house might go which is currently a single-family. And I think it has that green corridor, too. But anyway, it's on the other side of the street. But I

just want to make sure that those individuals, whether they were communicated with or they couldn't be here, that there's just a record that you may not have heard from them because that property's up for sale. And, again, we don't want any unnecessary precedents that would affect the neighborhood.

TIM HUGHES: Thank you.

Is there anyone who hasn't spoken already this evening?

GARY SELIGSON: I'm Gary Seligson (phonetic). I'm a real estate agent representing the property that's for sale next-door. I'm not really addressing the issues so much as maybe adding a little bit to the description. Because of the size of the lot, that house it does not affect the green space because it's much shallower lot. If you have a plan here, a neighborhood plan here, you can see that it doesn't affect it.

The owner of the house, as was mentioned, is in California and has not had a chance to review the plans. And, therefore, has not neither approved nor objected to the project. And as soon as we are able to get the plans to him, we will try to get the response back as soon as possible. I'm just adding a little bit. So we have been communicated with and that's where it stands at the moment.

TIM HUGHES: Thank you.

Anyone else?

(No response.)

TIM HUGHES: I'm going to close public testimony. I'm going to read some letters into the file and then I'll give the petitioners and chance to respond and I'll open it up to Board's questions or comments.

This is from Heidi Everhart and Mark Gorday. "We're requesting that you please reschedule this case. As homeowners and

neighbors, we are very happy to see that this property will be renovated and look forward to the improvement that will take place, but we have a few concerns so far. Many neighbors are unable to attend the meeting, and we're requesting additional details regarding proposed changes to the single-family home. Other than the additional two units we will respectfully request more details on this petition."

From John and Susan Purcell at 27 -- I'm sorry, that was 29 Avon Street.

John and Susan Purcell at 27 Avon Street. "Dear members of the Board: We are writing you today re case No. 9937, 13-15 Avon Street. We're unable to attend the Board meeting requesting a Variance by the petitioner for construction on this property. We look forward to seeing improvements made to this property and the neighborhood, but would like to have more

information as to the scope of the project, the modifications to the existing structure, and the impact it will have. We respectfully request the Board continue the case until we have a chance to review the details of the petition."

From Sarah Matese (phonetic). "I'm unable to attend the scheduled meeting regarding 13 Avon Street. As an abutting neighbor who looks out on 13 Avon, I would like to see exactly how the proposed Variance would impact the neighbors. While I'm in favor of improvements to our street, to date I have not had sufficient information to support the suggested Variance. I would like to ask the Board to continue the case."

And from Tom Kennedy and Theresa Norris of 25 Avon Street. "Due to prior commitments we're unable to BZA meeting for Thursday, May 27th, but we are willing to support improvements at 13 Avon Street, but documents

submitted as of the end of last week May 21st do not show enough detail and we have not had any discussions with the developer. Based upon the prior work of the developer, we expect that after reviewing the details, to be in favor of the Variance."

There's also a letter here from Charles Sullivan to Mr. Singanayagam the Building Commissioner. "I'm writing with regard to the above-referenced application for relief from the Zoning Ordinance to construct an addition to a non-conforming structure and to preserve an existing porch, bay and roof. The house at 13-15 Avon Street was built in 1869 by one of the original developers of the neighborhood Charles H. Saunders. The house has been altered numerous times in some bizarre ways. In addition, the original front porch and bay window project into the front yard setback. The owner's plans include removing some additions on the north

and rear and restoring the front part of the house to its original appearance. Approval of the requested relief will protect the front porch and bay window and enhance the historical character of the house and the neighborhood. I recommend that the Board look favorably on this application."

And a brief communication from the Planning Board. "The Planning Board finds the development plan for this site an enormous improvement on the existing conditions and supports the relief requested."

And that's the total of the communications in the file. Your chance to rebut.

MARK BOYES-WATSON: Just maybe I can make a couple of sort of Zoning-related comments.

Speaking to the issues of green space. The open space --

UNIDENTIFIED MALE: Can you speak louder so we can hear you?

MARK BOYES-WATSON: Yes, certainly.

The open space provided by the project -- I'm just trying to find the exact figure so I can get it right. The ratio of usable open space required in the neighborhood is 40 percent. The requested conditions is 58 percent open space. So exceeding by 18 percent the minimum requirements of the district. I think that -- so just in terms of the math actually, I think in terms of the sensibility of the proposed development, what we have tried to do with the design is to keep all of the -- what you might call the extension to the existing historic house to two stories. I think that those trees that are in the back of the lot that we have this L-shaped lot and so that this lot actually disproportionately if you like contributes to that sense of the

green corridor because it has this large unbuildable portion on the back of the lot. But actually by keeping that whole area to two stories, those large views in the sense of the lot of the open space is actually -- it's an attempt to do exactly that. So our interest were to maintain open space, hide the cars, and in the interest of the new owners of these houses, of course, will be the interest of the current residents in that the open space is a real selling point for them living in the city. So it's really a comment about the open space.

There was -- yes, that's really what I had.

TAD HEUER: Can you speak to the, I presume your basements are under seven feet?

MARK BOYES-WATSON: Yes, six foot, eleven basement. And the garage is, you know, they're not huge.

TAD HEUER: And a basement under

seven feet is by order of the state building code not counted towards FAR?

MARK BOYES-WATSON: Well, actually the floor area ratio is a local ordinance.

TAD HEUER: Correct.

MARK BOYES-WATSON: Some towns do and don't count it.

TAD HEUER: In Cambridge we don't.

MARK BOYES-WATSON: It's normal in the neighborhood. I mean, most of these houses because of the frost protection have a basement just like this. It's not an unusual condition anywhere in Cambridge, and certainly not on this street to have a basement.

TAD HEUER: Why do you need a bathroom in the basement?

MARK BOYES-WATSON: It's just an additional amenity.

MAHMOOD FIROUZBAKHT: What's currently in the basement now?

MARK BOYES-WATSON: The basement of the building, it has lots of different areas of basement. Do you remember exactly what's in there?

GUY ASAPH: Are we speaking to the existing house?

MARK BOYES-WATSON: Yes, in the existing.

GUY ASAPH: Oh, I'm sorry. It's got a play room, a family -- a TV room. I forget what you call it. A recreational room maybe. It's got a lot of storage. It's got mechanical. It's got rooms for carving workshops. Beautiful carving. Extra refrigerators.

MARK BOYES-WATSON: But I would say the existing, yes, the existing ceiling height is less than seven today.

TAD HEUER: Are you suggesting it's being illegally occupied?

MARK BOYES-WATSON: I don't think

Guy was making any inference just answering the question.

TIM HUGHES: I was left with the question why is the play room in the basement of a Jesuit dormitory?

GUY ASAPH: I don't think play room is the right word. It's got a TV and a couch and board games.

TIM HUGHES: Do you have any more rebuttal to the comments of your neighbors?

MARK BOYES-WATSON: Well, I just think that I would say just speaking I guess the two things that are important, I guess, is that the open space question in terms of the green. And then in terms of density, just to reiterate that the underlying zoning provides that, you know, for the first 5,000 square feet, the dwelling count will be -- you divide the first 5,000 square feet by 2,500, that yields two units. And then the balance of the lot actually has a lesser zoning -- it

allows for you to use a 400 divisor for that yielding the three units. So the three units being requested are permitted in the underlying zoning. In a townhouse -- you know, a Res. B allows townhouse configuration which is this configuration here. So the unit count and the amount of floor area barring the 103 that Guy described at the beginning are all permitted by the underlying zoning.

TIM HUGHES: Any questions from the Board?

GUY ASAPH: May I?

BRENDAN SULLIVAN: The garage. Just sort of key back on that. The setback right now is 26 feet, and again with the garage going in, a proposed is nine foot from the left side. But what you're using is the setback which would be a minimum of seven foot, five then with the sum of 20 on the left side and the right side. So the question is

does the bay trigger the violation on does the garage trigger the violation because --

MARK BOYES-WATSON: Yeah -- yes, I hear what you're saying. Right. There's a different way of coming at it.

BRENDAN SULLIVAN: And so you're going to have one or the other, but you can't have both basically.

MARK BOYES-WATSON: That's correct, yes.

BRENDAN SULLIVAN: And of course at the bay window, again, it's, it increases that violation. Without the bay window, then you're in compliance with the bay window than if it's out of compliance.

MARK BOYES-WATSON: Yeah, by putting the foundation on the bay window, it creates -- well, that's actually, that facade that we're actually referring to is less conforming today. If you built it, it's less conforming today. But you're right, the

three and a half -- whatever the projection of the bay, the three foot projection of the bay, if it has a foundation and you count that setback, would render the garage one non-conforming. Whichever way you -- because of that issue of the sum of the two, it needs to add to 20. The sum of the two side yards needs to add to 20.

BRENDAN SULLIVAN: And the view of that which would be the right side is on what sheet?

MARK BOYES-WATSON: It is on A-402. It's the second to last sheet. It's the last sheet in your little packet.

BRENDAN SULLIVAN: Well, just looking at the elevation.

(Side discussion between Mr. Asaph and Mr. Sullivan explaining plan.)

BRENDAN SULLIVAN: The garage is a more imposing structure than the bay?

MARK BOYES-WATSON: Yeah. And I

think as Guy is referring to, the way that the homes are designed it is non-essential for the project to put the foundations on the bay. So they wouldn't have a bay. They wouldn't have a foundation for the bay whereas in order to -- one of the things that does relate to the topography of the lot is that -- and it relates to this discussion, and why we are that dimension from that side lot line, is that you have this large L-shaped yard, but it's very hard for this house, you know, to actually front the garden. So actually, you know, the large piece of garden that goes off to the right so what we're trying to do is make sure that both of those have access to the open space.

TAD HEUER: On Z-102 you have the setback and FAR issues in red. Does the, I guess the western bay on the north side, does that encroach in the setback? It looks like it's --

MARK BOYES-WATSON: You're on sheet  
A-10 --

TAD HEUER: Sorry, Z-102. The red  
and blue sheet.

MARK BOYES-WATSON: Oh, yes. Okay.

TAD HEUER: So the western bay on the  
north face. So this one --

MARK BOYES-WATSON: Yes.

TAD HEUER: That encroaches in the  
setback?

MARK BOYES-WATSON: Well, you know,  
that's a very complicated -- that's a  
complicated geometry there. We thought it  
might. You're talking about the fact that  
the setback is ended by then?

TAD HEUER: Yes.

MARK BOYES-WATSON: Yes. You know,  
it's an interpretive. We took a  
conservative approach. Because I'm not  
quite sure interpretively where that side  
yard really ends.

TAD HEUER: Okay.

MARK BOYES-WATSON: I understand your point. I actually -- I don't think we all know definitively so it seemed crazy to have a question about it so that's why we put it --

THOMAS SCOTT: And a deck on that side of the house, is it ten feet or less?

MARK BOYES-WATSON: It is. And less than four feet off the ground.

TAD HEUER: What are the unit sizes?

GUY ASAPH: The front house about 2600. The second unit behind that is a two-bedroom, it's like 1300. And then the last unit in the back is a three-bedroom about 1500. Again, give or take a couple of feet.

TAD HEUER: Do you know how many other -- I presume most of the houses in this neighborhood, if I remember correctly, were at one point were single-family. Is that accurate?

MARK BOYES-WATSON: Well, you know, there's a lot of history in this neighborhood. Some build as twos. Some are built as side-by-side twos.

TAD HEUER: Right.

MARK BOYES-WATSON: And then in the later era there's the condominium buildings that were built. So starting up on the lane and coming down. So there's a mixture of things. The house is dating from the 1870s or even the 1850s because there's older houses on that street. 1850s. Some designed as twos and some of them singles. So there's a mixture in the neighborhood.

MAHMOOD FIROUZBAKHT: To do a recap of the area. Let's just for the sake of my own thinking, let's take the bay windows out of the equation. So you need relief for the height, which is existing. You need relief for the front porch because it's in the front setback which is really the existing

condition.

MARK BOYES-WATSON: Right.

GUY ASAPH: And that's it.

MARK BOYES-WATSON: I think -- that's it.

MAHMOOD FIROUZBAKHT: And FAR is another area of relief that you're requesting?

MARK BOYES-WATSON: Well, the relief requested is to extend -- because of the -- those non-conformities are allowed to be there, so the relief is to be allowed to extend while maintaining those non-conformities.

MAHMOOD FIROUZBAKHT: Extend what?

MARK BOYES-WATSON: Extend the building out to its allowable size despite the non-conformities of the existing condition. So the relief requested is to build the building as illustrated today despite the fact that the front porch and the

peak of the roof create a non-conforming there.

TIM HUGHES: To clarify, if you were to cut the peak off the mansard and you were to shorten up the front porch, would the whole project be able to go forward as of right?

MARK BOYES-WATSON: Yes. With the exception of the foundations on the bays and the 103 square feet. So you'd have to back 103 square feet out of the project, and then you can do three units exactly the square footage, minus the 103 and do everything as illustrated.

TIM HUGHES: I added up the blue areas and it doesn't come out to 103. Can you explain to me?

MARK BOYES-WATSON: Yeah. And I think I can. Because in fact, as I said in the presentation, I think the -- that was used -- you can't actually illustrate which 103 feet are over. So they're just sort of

used to sort of describe, you know, what that might consist of.

TIM HUGHES: The total project is 103 square feet?

MARK BOYES-WATSON: That's right. Were you to say in order to be, we would need to tell you where we were going to take that away. You know what I'm saying?

TAD HEUER: Right.

MAHMOOD FIROUZBAKHT: But in terms of total square footage, you're not adding any more than what's currently there?

MARK BOYES-WATSON: That's correct.

TIM HUGHES: But in that regard what's currently there is still 0.1 over the FAR?

MARK BOYES-WATSON: That's correct. .01.

TAD HEUER: Yes. And presumably you wouldn't want to -- I mean, this is being technical, you wouldn't be taking the 45

square feet off the front porch because you've been asked by Historical to keep it.

MARK BOYES-WATSON: Were that to be an issue, we would probably say we would shorten the house up by three inches or something off the backyard. That would get us there.

TIM HUGHES: More questions?  
Observations?

THOMAS SCOTT: All of the landscaping appears to have disappeared from the photo on this site plan. Could this be more intensely planned to appease your neighbors in terms of proximity to their property?

GUY ASAPH: Well, I was asked if I would plant ten, 20 foot arborvitaes along there. I said no, I don't think that's very realistic. But if you would like to plant ten on your side of the fence, that -- I would support that. But the landscaping, this

will be a project that will be very intensely landscaped. Landscaping is generally the last thing that's done after the mess is made. In this case we will be doing some in the fall. I'd like to plant a lot of bulbs in the front. We do stone retaining walls that will go around the whole property and the driveway and the entryways. But the final analysis is in the spring, what happens we really want to do some flowering trees back. Those trees that are on there in the back exist, and so to the side closest to me where there's nothing that's because nothing exists. So we've --

THOMAS SCOTT: But in the photograph that we saw, and I don't know where it went, it seems like there's a lot of vegetation along that edge. What happened to that vegetation? It's gone? It's gone in this plan I guess is my point. And your neighbors are saying we don't want you to do that.

GUY ASAPH: Yes.

THOMAS SCOTT: Can you be responsive to that?

GUY ASAPH: Well, the only thing that changes in this is this, I think it's a cherry or a blossoming tree, and that's kind of right in the footprint of the building. So that's the only tree that needs to move. And we intend to replant it actually in the other part of the backyard. But otherwise there's nothing that, no significant vegetation that changes.

THOMAS SCOTT: So, you're saying you're not willing to do anything along this edge to appease your neighbors I guess is what I'm asking. I mean, it seems like a big issue. There are privacy issues. You're building the house closer to the lot line, you know, you're encroaching on their privacy. You're asking for setback relief on this side of the property. It seems like there should

be some give.

GUY ASAPH: Well, if I could answer that --

THOMAS SCOTT: Sure.

GUY ASAPH: I've built about 100 units in Cambridge in 20 or so different projects. I don't recognize too many of you and you probably don't recognize me because --

UNIDENTIFIED MALE: I'm not sure everybody can hear you.

GUY ASAPH: This is the last place I want to be. When I'm evaluating a project, I want to do it as of right. And the only reason to come to a Variance, there's got to be a good reason for it. It's not because I want to build more or not because I want to build taller. There's got to be an important reason for why there's got to be a Variance. So I'm rarely in front of you guys and I like it that way. But 20 projects and 100 units,

I know that the key is all about the neighbors, all about the abutters. And I would be hard-pressed to believe where there's another developer in the city that takes greater pains to meet with and speak to the abutters before the project happens. At Historical I have a business card. I only have one phone number, that's my cell phone. The Historical Department, the Planning Department, the Building Department is instructed if anybody calls about anything, give them my phone number. This project, I went and I knocked on doors. The immediate abutters, I tried to set up appointments repeatedly. And for personal reasons that couldn't happen until relatively recently. But, that said, I care very much about my neighbors' perception. That said, the 20 projects and 100 units I have never built a project at the outset where my neighbors said this is wonderful, we love it. Change is

hard and anything that looks different just is always going to have an immediate negative response from someone because it's different. What I try and do is to design the best and most beautiful project and functional project that I can. I've got a great architect, and a great business partner with the least possible impact. I think this is an example of our best efforts to do that. The addition is all conformed, there are two stories where there could have been three stories. And the fact that it's a mansard roof really presents itself as a single-story building all subservant to the house that's restored. I take great pains to do it right.

THOMAS SCOTT: I have no problem with the --

GUY ASAPH: I'm sorry. All that was preface. I'm sorry, I talk too much. All that is always when you look at it, it's all about inches. It's, you know, if we only had

two more inches over here, we could fit a bathtub. And it's always about inches. And so you go by the zoning envelope by what's allowed and you work around it. And really it's the parking. The -- you design the parking and then you design the project around it. I believe what we've come up with is an incredibly sensitive design. People are concerned about the volume because of the garages. Well, I hate seeing the car parked outside. I think cars should be out of sight. So I view the garages as a benefit.

Now, another way to approach this is to come up with a monstrous ugly drawing and bring it around and say this is what I'm going to do. And then everybody can say oh, no, oh, no. And then you can just cut it down. When I met with my abutters that spoke tonight and I laid out the plans, their concern was the garage. Couldn't we just move this all over to the other side? I said no, I can't. You

know, one, the zoning doesn't allow me. But even if I could, the people over there aren't going to want it. This is what it is by right and this is what's allowed. So you're saying well, would you just take -- just cut this garage off. Can you just cut this garage off? No, I can't cut the garage off. Each thing is connected. I'm not going to tell you things that I can't do or won't do. The question is what can I do? Well, I mean there's a question about the fence. You know, we can work on the fence. There's a question on landscaping. We can work on landscaping. Right now the fence doesn't go all the way to the street. It stops about 20 feet short. So we don't want the fence to go all the way to the street. Okay, the fence doesn't have to go all the way to the street. I mean, there are certainly things we can work on. There's a very large tree. And I've learned from hard experience you don't touch

trees or you get in big trouble. But they expressed a desire that maybe they want to take this tree down. It doesn't look healthy. It threatens their property. There's another one that's in this drawing someplace, I can't pick it out, also on my property. So we really don't like that that's unhealthy. It kind of blocks. We'd like to take that out. I can, I can work where I can work, but I can't eliminate a garage. And this is the point that I wanted to address, and not trying to be either difficult or unresponsive to requests for later hearings, I think it's my experience that what people want to see is one big single-family or just a whole different thing, and that's not -- really not possible. Details on landscaping are absolute as many ways as I can I will. I hope that answers your question.

UNIDENTIFIED FEMALE: Why isn't it

possible --

TIM HUGHES: We're not having a discussion between the audience and the Board and the petitioner at this point.

UNIDENTIFIED FEMALE: Why not?

BRENDAN SULLIVAN: Personally I think it's a huge improvement as to what's there. However, to you, it's a marketplace. To them it's their home. It's their neighborhood. And to see the finished product, it's quite nice. I mean, Mark usually does a very nice picture. But to substitute that top photo for the bottom photo would raise my ire also. And, you know, if it can be done as of right, then let it be done as of right. But I would not support sanctioning substituting the top photo for the bottom photo.

THOMAS SCOTT: I think the point is that there's some process here that isn't complete I guess is what I'm saying. And,

you know, the case could be continued and you can continue to meet with the neighbors and work out these issues or we can take a vote tonight. I know you're probably anxious to get the project moving, but taking a chance.

GUY ASAPH: The project can't start until September, October anyway. We're on hold for when the church is able to close. It's very unusual that there's not a gun to our head.

BRENDAN SULLIVAN: You have significant opposition and people who have standing. And regardless of what we do here is not the final say.

TIM HUGHES: Not when I've heard consulting with a lawyer already mentioned.

MAHMOOD FIROUZBAKHT: Can I ask a couple of questions? Was there ever in the design process consideration for underground parking?

GUY ASAPH: No, no.

MAHMOOD FIROUZBAKHT: And then I guess the -- correlated to that, if you did consider that, would that help to reduce some of the massing?

MARK BOYES-WATSON: In this case actually -- the reason it wasn't considered was that, the -- actually the geometry and the size of the building that we're dealing with there's no room to deal with the cars.

BRENDAN SULLIVAN: It's more than a garage, Mahmood. It's a garage on the first level but it's an integral part of the master bathroom on the second level.

MARK BOYES-WATSON: Once you do it under the ground, you need to do the 22-foot backup plus the 18-foot space and you're suddenly into this 40 foot --

GUY ASAPH: 60 foot.

MARK BOYES-WATSON: Both ways it's 60 feet. So this way it's more intimate than allows for the underground parking solution.

MAHMOOD FIROUZBAKHT: Okay. And then --

GUY ASAPH: I have done underground parking on many of my projects because I thought it was aesthetically right. It's not a question of high end, it's enormously expensive to do it. But this is certainly a property that would support it. And I've done it in North Place where the condo units were selling for 400 and 500 thousand and still put an underground parking garage because it's the right thing to do on the site. It's not that I'm opposed to underground parking by any means. It's just that sometimes it's appropriate and sometimes it's not.

MAHMOOD FIROUZBAKHT: I'm legal that for the design. The materials on the driveway. I heard blacktop but I'm assuming it's not going to be blacktop.

GUY ASAPH: No, we use brick. But

not just brick what City Hall pavers.

MAHMOOD FIROUZBAKHT: Is it permeable?

GUY ASAPH: Yeah. It's gravel. Just placed together.

MAHMOOD FIROUZBAKHT: So in terms of groundwater there's filtration or would that be allowed given what you're proposing?

GUY ASAPH: Oh, yeah. The DPW -- I have to bring a site engineer in there and approve all that on the paper.

MAHMOOD FIROUZBAKHT: And then in your condo docs are you contemplating the restricting parking along the driveway outside of the garage spaces?

GUY ASAPH: Very much so. And that's, you know, in the condo documents it says nobody, you know, this is -- it's common area, your garage inside of your garage is your parking space. The driveway is common area. You can't park your car on my common

area because then someone wouldn't be able to back up and pull out.

MAHMOOD FIROUZBAKHT: That will be included in the condo docs?

GUY ASAPH: Yes.

BRENDAN SULLIVAN: But if there were a second car in the unit, then they have to park on the street?

GUY ASAPH: Yes.

BRENDAN SULLIVAN: Yes.

MAHMOOD FIROUZBAKHT: My take on it is that the neighborhood process and neighborhood outreach, particularly with your neighbor right across the street, you're a sophisticated developer, and I think that part of it could have definitely been improved. And I understand you made an attempt, but maybe this could have been done in a different way, where you had a neighborhood meeting or something, you know, it could have been done by invite. And if

somebody didn't show up, they knew about it, if they didn't show up, their loss, that kind of thing, you know. I would have a little bit more -- be a little bit more understanding about that kind of situation. So in that regard, I definitely sort of, you know, understand the sentiment coming from this corner of the Board and that that part of the process could have been improved.

On the other hand, I don't think -- I mean, you take the -- you take the bays out and the relief you're asking is really not very significant, especially given that most of what you're asking for is related to the existing condition of the building. And quite frankly I do see a hardship here. I see a hardship in that you're trying to preserve the historic integrity and character of the building and that's what the code allows for, and that's an element of hardship. And so, you know, so that -- and I think in terms of

the other elements of hardship in the code, gees, I think this is a very good example of where you can legally, within what's in the statute, justify it. But given that, you do have some neighborhood opposition. And so I do wonder whether if the smart thing would be to consider continuing, continuing in the neighborhood process and seeing if maybe you can work on some other considerations in design suggestions and come back.

GUY ASAPH: If I could just, you mentioned across the street. No. 16 who was here tonight and although I knocked on the door a couple times, I never did reach anyone. I did reach the people in No. 20 also directly across, the Wallaces. And they were going to send a letter of support that might have been e-mailed this afternoon. It doesn't matter, it's not in front of you. But they were quite -- but what they're looking at across the street is this whole ugly side. And of

course they were very happy to see what that would look like.

We've also spoken about the direct abutter that is in California and not heard from. Well, I had hoped they would attend tonight, but they have two small kids and weren't able to. There's a party that has an offer in on that house. That doesn't mean that they're going to own it, but they're a bona fide buyer that submitted an offer and they would have spoken in support. And I think common sense is you live next-door you'd rather have something 15 feet away from you that looks beautiful rather than something one foot away that looks ugly. So it's not -- I think there are some things that speak to improving the built environment for many years to come as opposed to what's there now.

TAD HEUER: I have a question for the Building Department. There seems to have

been some discussion from the audience regarding the allowability of a third unit on this property. Can you speak to what the Building Department believes is the law as to the third unit allowability?

SEAN O'GRADY: The third unit is allowed -- well, there's a couple issues.

The first issue is can you have three units in one lot on the B Zone? And the answer is in this case because it's a townhouse, yes.

The next question is whether or not you meet the rules of 526 which -- well, in this case because it's over FAR is not met, but I see that that was advertised for the up conversion. The four tests there are open space which I think is fine. FAR which there's a violation on. Parking, which seems to be fine. And lot per dwelling unit which seems to be fine. So it's the FAR overage causes a problem with the third

floor.

TAD HEUER: So it's the 0.1 increase, essentially there's 100 some odd square feet?

SEAN O'GRADY: Yes.

TAD HEUER: And if those 100 some odd square feet were removed from the project, it would be no violation as to a third unit, it would be by right?

SEAN O'GRADY: I believe so. I mean, I'm not familiar enough to say that 100 percent but theoretically yes, and I do believe that given what has been said that that is the case.

TAD HEUER: Can you talk to me a little bit -- and some of the abutters raised issues about privacy. And part of it was in the context of this green part that runs the length behind the buildings which I understand and I certainly, you know, if I were living there I would want it, too. And

I'm also cognizant of the limits of what this Board can do as vis-a-vis private property. Certainly there are great externalities to being able to look down on other peoples' back yards and see them as a piece of whole. But as the doctrine of fees seems absolute holds and always held the right to use your property is largely your right to use property subject to the restrictions that may be imposed by the city or the Zoning Board. And if you wish to cut down your trees, I don't believe there is anybody that can do to you. They might upset with you and it may make very bad neighbors, but I don't think any actions you took in that regard would make you in any way liable to anyone. The one thing that I'm concerned about is the deck. The several of the abutters and Nine, the south abutters directly? Mentioned that the deck particularly overlooking their property from the third unit, the rear unit, was one they

had a concern on. I presume they would also be somewhat concerned about the connecting deck over the garages.

MARK BOYES-WATSON: Which is they're further away.

TAD HEUER: Is much further away and does have a line of sight to them. Part of the reason I was asking was the mansard came around the edges of the unit one is because that would constrict you said directly out over the back of its own property into the Harvard properties, and I'm quite frankly less concerned about that. But can you talk about, you know, this deck, this second-story deck that appears to be very close to the lot line, that troubles me a bit.

MARK BOYES-WATSON: It's the deck that's, it's off the master bedroom of the unit. It's about --

GUY ASAPH: A-303.

MARK BOYES-WATSON: Yeah, A-303.

That's seven feet wide. And you're right, that one is the most proximate to the property line. And I think it's -- by its design, not a party deck. And also you're looking at a lovely yard here. It's just a little amenity to step out. So I think it's while you can't predict the use of a deck, that's not designed for assembly and sort of massive usage. But I do see that it's proximate to the lot line.

It does actually -- if you look at the relationship however -- what I mean, what I think the privacy issue is not so much to their home. Because if you look at the context plan, you can see that that deck is actually not that close to their home, but definitely overlooks the yard.

TAD HEUER: Right. And that's again a carve out of a mansard; is that right?

MARK BOYES-WATSON: If you look at the side elevation, yes, you can see that the mansard steps down there, and just has a

little -- so it's behind a solid ballister to try to mitigate the privacy. But you can obviously if you're standing, you're looking over the top of that.

TAD HEUER: How big is it? What's the square footage of that deck?

MARK BOYES-WATSON: The deck is about 80 square feet.

GUY ASAPH: I don't think it's that big.

MARK BOYES-WATSON: Am I wrong?

GUY ASAPH: Yeah, I think it's like at most it's six by seven I think.

MARK BOYES-WATSON: Well, I was just -- I hate to underestimate things when I'm asked those questions. So I'm just noticing -- I agree, it's a slightly strange geometry. You may be right, it might be 60 to 80.

GUY ASAPH: Also, you can see the end of the abutters's house on the site plan, and

the deck -- this is a one-story. Certainly the patio's here. And if you're enjoying your patio here, you know, that's proximate but it's really well beyond the back of their house. For me they're marketing things. Everyone thinks they want one, but nobody uses it.

TAD HEUER: Why do people come in and ask us for decks then?

GUY ASAPH: It's a different -- when a house where you've got a first floor area and a kitchen and a patio, that's where you're going.

TAD HEUER: Is there -- I mean, if we were to grant you relief on this project, is there any way that that deck could be converted into a south facing only deck? Sorry, apologies. A west facing only deck so it would completely screen the No. 9 people from anyone looking into their yard? So to extend the mansard in the same way that you

do for the No. 1 around the edge of that constricts it a little bit if you're facing south only, but it provides significantly more privacy for the south abutters.

GUY ASAPH: The short answer is yes.

TAD HEUER: Okay.

GUY ASAPH: If this was to be approved tonight, certainly. I think there's a little more challenge with -- this is a really complicated roof and how corners come together. I would go even further to say I'll eliminate that deck. Could you give me another like 50 square feet, because we can make it -- we can somehow make that roof, we can square the building. But, yes.

TAD HEUER: Right.

I think I'm kind of where Mahmood is. I think the process was suboptimal to say the least. I think, you know, maybe part of this is the fact that you're not in front of us frequently. I know that it seems Mark's in

front of us like every other week. I think you have a lot of neighbors who, you know, as you've heard, they've been in the neighborhood, passing through the years 15 years seems to be the low end at least those who are here, 20 years, 25 years, 30 years. Anyone for 50 years? No?

So I mean, this isn't necessarily a transient neighborhood. And you've heard not only from the long-term owners but also from people who worked very collaboratively across their property lines to create more than the sum of the parts. And I think because of that going the extra mile with these folks, I would always advocate going the extra mile, but particularly here I think, it's a very -- it seems to be a very invested in the community, community. That being said, on the specific relief requested I think I would also agree with Mahmood that it's exceptionally minimal as to what's in

front of us. It's a significant change in terms of the footprint of the building, but we're limited in looking at the FAR and other kinds of technical issues, and it complies with almost everything that we ask for. It's being -- the addition in the back I understand causes concern to the people who are facing it. I think the people who are at No. 19, if that's the north side neighbor, I would agree would be thrilled to not have a three-story dormer on their property line. So the building essentially being shifted or twisted from the north side to the southwest side. And the relief that's being requested is, again, based on preexisting conditions, because the front porch that already exists and the height that already exists. This isn't a situation where someone's coming in asking for 37 feet when they have 35. They're coming at 37 saying, you know the reason we're in front of you is because there

are two parts of the building that aren't being touched by our changes are technically putting us over the limit. I think for me it's frequently those issues that is it technically something that six inches on the front porch that already exists and two feet on the mansard roof that already exists and historically exist. If you can do it by right by shaving off the front porch and shaving off the top of the roof, I think the neighborhood is left worse off to no advantage to anyone. And allow you to build by right what they may not be pleased with and you lose the front porch and the roof in the process, I think is a net loss for everyone.

So, in the sum of parts I think I'm where Mahmood was. I think the process could be a lot better. I wouldn't be averse to letting you go back to the neighborhood and have them give you concerns in a more collaborative manner than here in the quasi adversarial

context across the table. Maybe some has seen the plans for the first time. I think one letter said the first time they've seen these plans was Friday. You know, we know that our deadline is Monday by close of business, five o'clock, but for people who are in the neighborhood, I think they'd like more than a couple of days to be able to digest things. Maybe nothing changes, and maybe these minimal things that are putting you over become irreconcilable, but -- and I think to the extent that there's a question of hardship. I think I would be able to find I think the lot size is also a hardship. It's a strangely shaped lot. The lot size is clearly a question of hardship that's raised by the statute that allows hardship by the statute. We've made lot size, you know, granted lot size variance, lot shape variances for much less egregious lot shapes in the past outside of many other

communities.

So I think on balance if we go to a vote tonight, I would support it, but I'm not quite sure that the neighbors shouldn't have a chance to meet with you and go that extra step.

GUY ASAPH: This may sound -- I don't know -- you don't want -- I'll throw it out there anyway. I've been here many times and certainly if abutters want me to chop off the garage, I can't do it. If the abutters are concerned about that particular deck, I can work on something like that. If the abutters are concerned about the fence and the property line, I can work on something like that. Of course, at my expense. If the neighbors are concerned that some trees should come down or some trees should go up, I'm very happy to work with that, too, with the proviso that, you know, somebody would say, you know, as long as you don't touch a

tree, it's great. And somebody else says I want this tree down. There's some inherent conflicts. But I would -- if this would get you a favorable support tonight and if you wanted to have a follow up, I would be happy to be on your schedule to meet, to come back and present to you with the abutters what we've managed to do on those issues that we can work with. We are certainly having the abutters to force me to cut the top off the roof if that's what they choose. But I found when it's just go back and somehow getting everyone together it never happens. I say here I am, anybody call me, I'm available any moment at any time which is essentially what I've done and I never get the phone call. If it kinds of works the other way, if there was an approval for this and you wanted to allocate 15 minutes at the beginning on your continued hearings just to hear what process there was, if you hear back from the abutters

oh, he's a skunk, he wouldn't do anything. Well, then I'll be in trouble next time I'm here. And if you do hear, you know, what I am willing to do, it's an idea.

TAD HEUER: Yes, I mean I think -- I'm speaking just for myself obviously. Some of the concerns may be substantive and at that point there's a decision to be made and I guess that's our decision whether or not it's substantial enough hardship to require a variance whether it's minimal enough relief to allow a variance. So there are some things where you may say I want this or the neighbors say we don't want this. And that's just a disagreement and we play referee for lack of a better phrase based on the relief that you're requesting. But there's a process of, you know, do people -- you've mentioned the types of landscaping you'd be willing to do. I would bet that, you know, a number of

audience members tonight don't quite know what level of landscaping you would be willing to put in. The extent to which you would be able to do X, Y or Z. So on the things where you can offer assurances, I think part of this is just a disagreement based on information people are concerned because they feel like they may not have the full information and, you know, although they're hearing from some of the audience members that you've been a very conscientious developer on other properties, I think the fact that there are less conscientious developers out there is a legitimate concern that people have any time in the neighborhood. This is one property amongst many properties that haven't gone through a lot of renovation perhaps in the past, in other parts of the city, particularly not to this extent and if you've only got one shot to make it look great, you kind of want to make

sure you've got someone there that you're able to get in touch with that, you know, is going to do it to the extent possible and comports with the neighborhood's needs. You go away, but they have to live next to it.

And that being said, I understand that there are some things that are rock, hard place and you have a fundamental substantive disagreement. What I was getting from people tonight was that although substantive disagreements may be there at the end of the day, and hopefully people can agree to disagree and, you know, let the Board's decision be the Board's decision, there are other areas where people would like to have more information about what could go on and what is negotiable. And I think also hearing, you know, some people want this tree up and some people want it down. You can say No. 10 wants the tree there and No. 12 hates it, and they lived with it for 20 years.

Everyone has this notion of what's going on in the neighborhood, here's the decision I can make but at least it's being made.

MAHMOOD FIROUZBAKHT: I would agree with Tad. Out of that neighborhood -- additional neighborhood process I'm not expecting that you reconfigure the entire design, but I think it's just -- it seems to be a need for further discussion. I think there are smaller elements that would help the situation along, particularly through the construction process and, you know, that I think that might go a long way. And your reputation throughout the city, I think that would go a long way as well. And as you said, you have some sometime. So, it seems like that shouldn't be a big burden to you.

In terms every coordinating, you know, you've got most of the people who are interested like right here. Once this is

concluded, you can go in the back room and pick a couple of days and get together. I don't think it needs to be any more complicated than that. So that's what I would suggest.

THOMAS SCOTT: I agree. And if you picked a couple of dates and no one showed up. You can come back and report to us that no one showed up. At that point I would be more inclined to vote for the project. But at this point I feel like the process isn't complete you haven't responded to. And I think the project in general is a huge improvement over what's sitting there today obviously. The scale of the building is definitely a much better scale. The fact that the architecture is responsive to the existing house. I mean, it's just very nicely done. You have -- Mark's done a great job. But I think I would feel better if the process were complete.

GUY ASAPH: Okay.

THOMAS SCOTT: Okay?

TIM HUGHES: I agree with almost everything my colleagues have said except for the continuance part. I am not convinced that the process would be furthered along, and I believe we started this whole thing tonight with me basically offering you that out before we sat here for an hour, and a half, two hours. So I'm disinclined but I will vote for a discontinuance if the rest of the Board thinks that's proper.

MAHMOOD FIROUZBAKHT: And is that what the applicant is requesting?

GUY ASAPH: And likewise, I started to say no, I want a vote up or down tonight. So I'll back off that and we'll agree with whatever the Board wants. So, maybe you and I can go back --

TIM HUGHES: Well, I really need you to ask for a continuance otherwise I'm

inclined to make a motion and vote on the thing.

THOMAS SCOTT: Don't let anyone leave until you settle on a date.

GUY ASAPH: That's what -- if I was to request a continuance, when would that be --

TIM HUGHES: The earliest date?

SEAN O'GRADY: The earliest date is August 12th.

GUY ASAPH: Oh, my.

MARK BOYES-WATSON: Is that really the first available?

SEAN O'GRADY: Not only is that the first available, but everything before that is overbooked.

GUY ASAPH: Well, I think if we can overbook this one, too, there wouldn't be a lot of ground to cover not for me.

TIM HUGHES: Well, see that's what I am afraid of. And I'm afraid that's why a

continuance may be a total waste of time because I think -- your sense of integrity about the project is going to butt heads with the people failure to see change as anything but destructive. And I don't -- I'm not convinced that a continuance would be of any benefit here. Having said that, I do believe that you're asking for minimal zoning relief.

THOMAS SCOTT: The discussion that occurred between those parties that haven't had that opportunity to talk to him. He says he's knocked on doors and just hasn't been able to contact people.

TIM HUGHES: I agree. I don't want to argue that. If the petitioner asks for a continuance, I will vote with the Board if that's what the sentiment is, but it's not what I would do.

BRENDAN SULLIVAN: I think you're correct personally. I think the Chairman's correct that I'm not sure that a continuance,

it may be some fine tuning of some of it. The major objection and the major part of this project are at opposite ends.

TIM HUGHES: I think even given a continuance it's going to come back to us with the same decision we need to make, is that it's minimal zoning relief versus a substantial neighborhood opposition. And we're going to have to make that decision. You know, whether we make it tonight or we make it in a month and a half, we're going to make it.

MAHMOOD FIROUZBAKHT: The difference being that our decision is still outstanding and therefore gives the developer a little bit more incentive to work nicely with the neighborhood to make everyone happier. I guess that's the difference.

TIM HUGHES: I can see that.

MARK BOYES-WATSON: So what would be -- I see the difficulty. The other thing

is would be to -- for there to be a series of conditions. Like I think you mentioned screening, right?

THOMAS SCOTT: Yes.

MARK BOYES-WATSON: Landscape screening. Like, I mean I'm just floating. Like the removal of that deck.

TIM HUGHES: But I think all of those things would have to be discussed with the neighbors. We're not going to sit here and tack on a bunch of conditions that I'm not sure would even appease the neighbors just to tack on conditions, you know. If there were specifics that were mentioned in opposition, then they're not going to be changed by screening and a couple of conditions here.

MARK BOYES-WATSON: Right.

GUY ASAPH: You know, I believe you're right. I don't know that we'll get much further. If --

TIM HUGHES: But my colleagues want

to see that the process has played out the way it's supposed to play out.

GUY ASAPH: Well, what I was going to suggest. I know that deck is a concern. I can eliminate that deck.

TIM HUGHES: Yes, that's not -- we're not going to start picking the plans apart in order to an try to appease non-specifics, you know. It's either you ask for a continuance and you go back and you talk to them, or we vote on the thing up or down right now. Those are your two choices.

GUY ASAPH: Okay.

TIM HUGHES: And I don't know what the sentiment is if we go to a vote right now, neither do you. So take your pick. It's been long enough. Let's do something.

GUY ASAPH: If you wanted to bring an immediate abutter next-door and ask the question if we eliminate the deck and we do whatever you want --

TIM HUGHES: I want you to do that. If we're going to grant a continuance, that's what you need to do. You need to find out whose concerns are what and then bring it back to us and we'll weigh this thing again.

BRENDAN SULLIVAN: The third option would be to continue this, let us hear the next case. Either two of you or all of you go and then come back to us and say either take it to a vote or we will continue it because it may be productive.

GUY ASAPH: That would be great if that were an option.

BRENDAN SULLIVAN: It's options for you. It's up to you. Because we can go round and round and round.

TIM HUGHES: We have another case. We're going to be here for a little bit longer. But it's not a hard case, I'll tell you that right now. So you don't have a lot of time here.

All right. So, I'll make a motion that we continue this case until later in the evening after we've heard our final case.

TAD HEUER: It means that for the next 15 minutes that room back there is open. If there's things that can be addressed that are substantive condition type elements where he says I'm going to remove this deck or I'm going to bring the corner around the deck so No. 9 never sees people in the back. And I'm going to put in plantings and so it looks like people say that's fine, then that will work. If it's not, he comes back and he says I either want you to vote or I want you to extend it out, fully continue it to the August date where we come back, he's had time to try to meet with you, have discussions, meet with people he hasn't discussed with, and then we have a hopefully a much abbreviated version of what we've just had tonight and then we have a final vote on

whether or not the Variance is granted.

BRENDAN SULLIVAN: You can agree or agree to disagree. But do it in 20 minutes.

GUY ASAPH: And personally I could be wrong, but I would suspect when we're back in 20 minutes, I'll be asking you to have a vote. I hope that's not the case.

BRENDAN SULLIVAN: That's fine. Whatever. So the motion is to continue this until later on in the evening until after the conclusion of the last case, which is the next one.

TIM HUGHES: Until such a time we finish our final case.

UNIDENTIFIED FEMALE: Can you just define who are the people with legal standing as abutters?

SEAN O'GRADY: Everyone who got a letter from us. Everyone who got a letter from the City is presumed to have legal standing.

MARK BOYES-WATSON: Do you have a list there?

SEAN O'GRADY: There's one in the file.

BRENDAN SULLIVAN: Abutters to abutters within 300 feet of the locus.

UNIDENTIFIED FEMALE: Okay. And you've heard this is the first time we've met.

UNIDENTIFIED MALE: This short meeting is not meant to take the place of what you're first suggesting however?

TAD HEUER: No, we have a somewhat optimistic and maybe childlike hope that there might be some resolution that would allow everyone to go back home satiated to some extent because we're trying very hard.

UNIDENTIFIED FEMALE: There is an appeals process?

TAD HEUER: Oh, sure.

TIM HUGHES: There is indeed. 20 minute or so recess.

All those in favor?

(Show of hands.)

TIM HUGHES: All in favor.

(Hughes, Sullivan, Heuer, Scott,  
Firouzbakht).

(10:30 p.m.)

(Sitting Members: Tim Hughes, Brendan  
Sullivan, Tad Heuer, Thomas Scott, Mahmood  
Firouzbakht.)

TIM HUGHES: The Chair will call  
case No. 9938, 8 Cottage Street.

TAD HEUER: Let the record show  
there's no one in the audience.

STEVEN BEAUCHER: So Steven

Beaucher, architect from Beaucher and Lea Architecture.

STEPHEN FULLER: And my name is Steve Fuller. I'm the owner of 8 Cottage Street.

STEVEN BEAUCHER: The property here at 8 Cottage Street was built in 1842. In 2007 Steve moved in the property and engaged our services at least a year or so ago to begin a long-term development improvement of his home for long-term use for internal and exterior renovations today. And we're here for our exterior renovations and proposed front porch. The idea is to recreate a historically sensitive front porch, something that was removed at some time in the 20th century. There was documentation that it existed on an 1876 plan that Steve has found in the engineers field books at the Historical Commission. So, this as quick little study showing as it is now, almost with

the insensitive materials, the vinyl siding, the porch long disappeared and then quickly a little study of what we're proposing to do. And it's not -- material wise and aesthetically the porch is just part of the overall wrapping of the building with classic alabasters going back to true painted wood siding materials. So the porch is sort of key to that whole, that whole proposal.

The hardship here is that this, the front of the building is within the absolute minimum of 10 foot setback in the C-1 District and both sides of the building violate the existing setback. So the porch itself would be a non-conforming proposal. So, we're seeking relief for that because it is sort of lynch pin to the whole restoration of the property. And it does in our opinion, impinge on anyone's -- there are no egress routes that are impinged upon. They're actually improved for this building.

There's no neighborhood paths or circulation or parking that's impacted by this. There are no views or privacy. We feel, we actually feel it increases Steve's connection to the neighborhood. Now he'll have his front porch to sit on and be part of the neighborhood. That's it in a nutshell. Steve also has some --

STEPHEN FULLER: Did happen to get letters from abutters?

TIM HUGHES: Yes, I have two letters in support and a letter from Charles Sullivan at Historical.

STEPHEN FULLER: A neighbor left this in my door to pass over as well.

TIM HUGHES: It's addressed to you, can I open it?

STEPHEN FULLER: Yes, you can open it.

TAD HEUER: This is impressive that he's given us the letter, although sealed,

doesn't even know its contents.

STEPHEN FULLER: I have a copy.

TIM HUGHES: Is the increased FAR all due to the porch?

STEVEN BEAUCHER: Yes.

TAD HEUER: How deep is the porch?

STEVEN BEAUCHER: The porch is about four feet.

TIM HUGHES: The loss in the setback is 3.7.

STEPHEN FULLER: It's based on the historical drawing exactly.

TAD HEUER: So one question I have about it -- and I like the porch. I think it's a good addition. Obviously the house to the left of you has a similar porch is that right, across Cottage Way, right?

STEPHEN FULLER: Cottage Court.

TAD HEUER: Cottage Court. And then there are a couple of houses further up Cottage Street over the other side of Cross

Street like in the 30s or 40s that have similar. The one thing that is unique or different about this one is the side stairs type railing, can you explain why that's either A, historically accurate or B, necessary? Because it doesn't look like -- the other houses have a side stair leading into the driveway, so I would see why you would want that. These seem to just lead into a side yard and sort of run into a gate. Can you talk to us about that?

STEVEN BEAUCHER: Yep. It's the single two railing obviously is not a historically accurate detail. It's something there for convenience. The deck itself is -- it purports itself as under the 30-inch height requiring -- so it does not require guardrails. And we want to just have something there that's minimal so it doesn't be obstruct the view. We didn't want to get into all sorts of detail of ballisters. Just

keep something minimal to hold on.

TAD HEUER: Why do you need a stair leading off?

STEPHEN FULLER: It was a stair that I had intended to go to the garden gate.

STEVEN BEAUCHER: Yeah, a convenient staircase to go to this little gate. When Stephen purchased the property, this was all chain link fence and really in sad shape. And he's done a lot of effort to improve the yard and this is part of that.

TIM HUGHES: Any other questions from the Board? I'm going to open it up to public testimony.

THOMAS SCOTT: I have one question. The picture of the roof seems to be different.

STEVEN BEAUCHER: It's just the perspective.

THOMAS SCOTT: The perspective of the photo?

STEVEN BEAUCHER: Yeah. This is a

literal two-dimensional view.

THOMAS SCOTT: It is. That's better than the picture.

STEVEN BEAUCHER: Yeah. That's few minutes in Photo Shop versus three days.

THOMAS SCOTT: Okay.

TIM HUGHES: Seeing no one, I'll close public testimony. I have some letters in the file.

The one I just opened from Stacey John Thomas. "I planned to be at tomorrow evening's public hearing in support of Mr. Fuller's variance petition, but had an unexpected event to attend to. Mr. Fuller has before received we received the notice for the public hearing, talked with all of the abutting neighbors and other people of interest and showed his plan for restoring the facade of the property to its original condition (based on 1876 drawings). As a respectful and considerate and conscientious

neighbor of almost five years, I as a former Board of Zoning Appeal member, are in full sort of his request and would like this letter read into the minutes of the meeting. If you have any additional questions or if I can be any additional assistance to Mr. Fuller, the Board or my city please do not hesitate contacting me."

And to Mr. Singanayagam from Charles Sullivan from the Historical Commission. "I'm writing with regard to the above- referenced application for relief from the setback requirements for the Zoning Ordinance. The house at 8 Cottage Street was built in the 1842 in the vernacular Greek revival style. At some point in the mid 20th Century the front porch was removed. The owner wishes to replace it and restore the house substantially to its original appearance. I've reviewed the owner's plans and I agree that the historical preservation

of the objectives will be served by the proposed alterations. In 2005 I supported the next-door neighbor's application for a variance to accomplish the same purpose, and I am pleased to make the same recommendations to the Board in this case."

Kenneth Zolot and Jennifer Philly Zolot, I'm guessing, 10 Cottage Street. "We're writing to express our support for Steve Fuller's request for a variance as described in case 9938. We reviewed the plans and we're quite pleased with the improvements this will make to the street. Steve is a responsible neighbor and we're glad to see him enhancing the property."

And from Audrey Sturgis, S-t-u-r-g-i-s, 6 Cottage Street. "I will not be able to attend the variance hearing on Thursday, May 27, 2010. I'm the owner of 6 Cottage Street and the next-door neighbor of Stephen Fuller. I'm in favor of the new

addition to the Greek revival porch which will include large front door side lights. Restoration to 8 Cottage Street will only enhance the beauty of other properties on the street and I'm in favor of the new design."

And that's the subtotal of the correspondence.

BRENDAN SULLIVAN: Who wrote the first letter?

TIM HUGHES: Stacey John Thomas. At 9A Cottage Street.

STEPHEN FULLER: It's directly across the street.

TIM HUGHES: Any questions, comments from the Board?

Any rebuttal to the letters of support?

STEVEN BEAUCHER: Not from me.

STEPHEN FULLER: That would not be wise.

TIM HUGHES: Ready for a motion?  
The Chair would move that a Variance be

granted to construct an addition -- that's the wrong one -- the Variance be granted for the exterior restoration which includes the addition of a Greek revival porch based on 1876 drawings on the house as found at the Historical Commission at 8 Cottage Street, Cambridge. Do I actually have a set of plans in here?

STEPHEN FULLER: Just check the date of the plan.

STEVEN BEAUCHER: 5/17/10 on them?

TIM HUGHES: Not this one. I have it right here. That's the current one.

STEVEN BEAUCHER: Yes.

TIM HUGHES: Let me continue my motion.

For the Variance to be granted a literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise to the Petitioner or Applicant for the following

reasons:

Without the addition, reconstruction of the historically sensitive front porch addition and replacement of the front door side lights, restoration of the property to its original historical state would not be possible.

The hardship is owing to the following circumstances:

The hardship is owing to the fact that the building is a preexisting non-conforming too close to the existing front property line. Proposed additional changes are only within the front setback.

A substantial detriment -- desirable relief may be granted without either substantial detriment to the public good for the following reasons:

Proposed front porch addition and window side lights would restore the historical character and aesthetics of the

house without negatively impacting egress or ingress, neighborhood traffic or being a hazard or nuisance to the neighborhood.

Relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance.

Proposed changes would allow a historic restoration of the property. These changes are only within the front yard setback but not constructed any closer to abutting properties.

The Chair would further move that the renovation take place in substantial -- in accordance with the plans dated 5/17/2010. Fuller residence exterior renovations, and initialed on the front page by the Chair.

Am I missing anything?

All those in favor of granting the Variance?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Scott, Heuer,  
Firouzbakht.)

(10:45 p.m.)

(Sitting Members: Tim Hughes, Brendan  
Sullivan, Tad Heuer, Thomas Scott, Mahmood  
Firouzbakht.)

TIM HUGHES: We need a spokesperson  
from each side of the discussion to see where  
we're at I would say. You want to go first?  
You went first last time.

GUY ASAPH: It doesn't matter.  
Okay, that would be --

TIM HUGHES: Could someone in the neighborhood group volunteer to give us a rundown. Frank?

TAD HEUER: Just identify yourself again for the stenographer.

FRANK KRAMER: My name is Frank Kramer and I live at 7 Avon Street.

And it was difficult because we haven't even met each other, many of us, to get a consensus from everybody, so I'll do my best. But our feeling was that we would like to meet and we thought that it would be very possible to get a group of -- a large group of the neighbors who are interested in the project and to speak to Guy Asaph about the project. And if he would ask for a continuance, we would get everybody there. And then we went in and tried to say that to him. Guy wanted to find out some representation from us as to what we would like to see changed about the project. I was very reluctant to let anybody

do that, but some people did make some comments. I thought that that was precipitous and not a good thing to do, because it doesn't represent a group. Besides the fact that there were three people that wrote to you that said they wanted to weigh in and wanted a continuance and we don't know those people, we haven't talked to them at all. We would like, I think most of us, if not all of us, would like a chance to talk to Mr. Asaph before there is a decision made before there is a vote and we would be very willing to do that. What happened is that Mr. Asaph wanted us to tell him a few things. We said you need to tell us that you'll go in and ask for a continuance, and he would not agree to do that. And we said well, then going for a vote, what's the point in talking to us? And he said well, maybe I'll go in and ask for a vote and talk to you afterwards. And we didn't feel there was a lot of value

in that. If there's anybody --

MARNEY CLIPPINGER: Yeah, can I just add?

TIM HUGHES: Yes, please.

MARNEY CLIPPINGER: There was not an attempt to discuss this in good faith. Oh, Marney Clippinger, 9 Avon Street. We would like to discuss this in good faith, but he's not going to ask for a continuance to discuss this in good faith. Any discussion would be irrelevant.

TIM HUGHES: Can you represent your side of this argument?

GUY ASAPH: I can try. It began by everyone kind of left to the front and I didn't know if anyone was going to come meet or not. I thought everyone was just going to leave. Are people leaving or they coming back? No, we're just talking things over. I said okay, I'll just be there whenever you're ready. That was maybe 25 minutes, 20

minutes, however long it was. So we were together for maybe six minutes, I don't know. I wasn't timing it. But all of this time was not spent in discussing. When people did come in, there was just well, this and this, and this. And I said well, could we, could we start with -- is there any concrete things that I can do? There was some discussions about different things. Is there anything that anyone here could suggest that I could do to help with this? And someone said if I could realign the building, that would help. Someone else said I should have six car garages, not three. Those are the only two specific things. While people are saying that other people were saying that we don't want to talk about specific things, we just want to -- we should set up a meeting. So I said okay, let's set up a meeting right now. Let's pick two dates immediately and we'll set up a meeting. I'm available any time.

Let's make two dates. And well, not sure about a date, but let's -- why don't we just go in and ask for a continuance and then we can set the date later. And I said no, I want to set some dates. We have a few minutes to try and accomplish something here. Let's set some dates for when we come in. And then it became well, no, we're not going to set any dates unless you apply for a continuance. And I said well, I don't know that I'm going to apply for a continuance. I don't know that there's a point. I think you're exactly right, if you want me to relocate the building over the issue of whether six inches should come off the porch, I just don't imagine us meeting any ground. So that's my perception. We did not set any dates. I would like to say I would be very happy to meet with the neighbors. I would be very happy to work certainly along fencing, landscaping and the step. I honestly can't see any

issues on this side of the property. I can't see any issues on this side of the property.

TAD HEUER: That's the north and east side?

GUY ASAPH: That's the street elevation. And where all the ugliness goes away. And it comes down to this area and this property line and I'm willing to meet and discuss fencing and privacy and landscaping and even that deck on the building. I'm willing to do that regardless of what the Board does. If the Board votes down this Variance, I will still offer to do that and try and schedule it. But I don't, I don't think any progress at all will be made between now and August 19th. So I would respectfully ask for a vote on the Variance of the deck and the height. There are the other ones about the bays and the 100 square feet. I don't know if you want to look at it all at once or separate one or the other. But I would like

to go with the will of the Board, but I believe you kind of hit the nail on the head.

TIM HUGHES: The 100 square feet, is it even part of the advertised?

MARK BOYES-WATSON: It's FAR.

SEAN O'GRADY: Yes, it's sufficiently advertised.

TIM HUGHES: It was sufficiently advertised?

SEAN O'GRADY: Yes.

TIM HUGHES: Well, what's the pleasure of the Board?

BRENDAN SULLIVAN: Take a vote.

TIM HUGHES: Let's make a motion?

TAD HEUER: On what?

TIM HUGHES: I can't really separate them out. It's either up or down on everything.

SEAN O'GRADY: Well, I mean if you -- well, you can structure it however you want, but just keep in mind if you're going

to vote the 100 square feet out, what does that mean?

TIM HUGHES: And I don't have a plan that reflects the 100 square feet out. It just highlights. But we already talked about not knowing exactly where those 100 square feet were.

MAHMOOD FIROUZBAKHT: I guess in terms of separating it out, we could vote the foundation for the bays out, correct? That is one piece.

SEAN O'GRADY: Yes, that would come out. You still don't have plans. I think you can probably do that safely.

MAHMOOD FIROUZBAKHT: And, therefore, that would negate the need for setback relief based on those bays, right?

SEAN O'GRADY: Yes, those bays would now become conforming.

MAHMOOD FIROUZBAKHT: I would suggest that if we take that vote would

involve that element of the project.

TIM HUGHES: The foundation.

MAHMOOD FIROUZBAKHT: So that we don't grant relief based on the bays and grant setback relief.

TIM HUGHES: So I'm setting the motion that basically speaks to the --

MAHMOOD FIROUZBAKHT: And the reason I would say that or expand on that is because then taking those -- that element out of the relief requested really doesn't, in my mind, limits the relief required to pretty much the existing conditions of the property. And in terms of making the legal argument as to the relief being requested and us having authority to grant that relief, I think we're in a much better position to do so.

BRENDAN SULLIVAN: Sean, if you take away the foundations away from the bay windows it does not become an FAR --

SEAN O'GRADY: That doesn't solve

FAR.

BRENDAN SULLIVAN: -- issue. It shouldn't. But the bays become conforming as far as setback is concerned?

SEAN O'GRADY: Bays with a couple of caveats can invade setbacks from projecting three and a half feet from non-invading walls. That is if the wall itself is not in the setback, the bay cantilevered not more than 25 percent of the face can invade the setback by up to three and a half feet.

BRENDAN SULLIVAN: And I guess the question I have is the bay, vis-a-vis the garage, because one is triggering the non-compliance.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And so if we take the foundation away from the bay --

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: -- I guess my question is can they build the garage as of

right? The bays can go in as of right because now you've got obviously the seven and a half foot sum of 20, you have to add up the setbacks on the left side and the right side.

SEAN O'GRADY: Yes. They can choose which sides the seven and a half side. And so long as they have those two walls sum up to 20, then the bay can eat three and a half feet into that 20.

BRENDAN SULLIVAN: So then the bay, it's almost as if the bay doesn't exist?

SEAN O'GRADY: Exactly.

BRENDAN SULLIVAN: Okay. All right.

TAD HEUER: I think we're on exceptionally solid legal ground even if you left the bays in for setback relief, but you can make two motions in that was the way you want to do it.

TIM HUGHES: I can see the sense of it from a building perspective to put the

foundations in.

MAHMOOD FIROUZBAKHT: I certainly can, too. I just heard lawyer being mentioned a few times tonight and, therefore, I'm trying to put us, and if we come on the side of a development, put us in the best position to make a legal argument and also keep the integrity of your decision intact. But I'm open to going the other way as well because I think it does make more sense building wise, but that's why I'm suggesting voting the other way.

TIM HUGHES: Any other thoughts? How am I framing this motion?

GUY ASAPH: Can I make just a little suggestion just because there's -- it seems take the bays out, take the FAR out.

MARK BOYES-WATSON: Take the foundations --

GUY ASAPH: Take the foundations out of the bays and take the FAR. And just leave

it to the height and the porch.

TAD HEUER: We can't take the FAR out because we don't have a plan.

MARK BOYES-WATSON: They don't have a drawing.

GUY ASAPH: Sorry. What I as trying to get to is we can always come back again and ask for something and maybe we'll even have some neighbors coming say yeah, do it. That's great because we've worked other things out. So if there's anything you want to leave out, leave it out.

TAD HEUER: I think the FAR obviously has to stay in because we don't have the plan. There's nothing to vote on. The FAR would have to be taken out of the footprint somewhere perhaps and at that point it's much more difficult for us -- it's taken out of A, footprint or B, out of envelope and massing. Either way it's something that either one of us would approve.

TIM HUGHES: I agree that we don't have a plan. But this plan could easily suggest that there are no foundations under the bay window. At least the ones that violate setback.

MARK BOYES-WATSON: Well, the only way you can conceivably do that, the building is 50 feet wide, this back building? You take a foot out of it, one foot one out of it, that FAR goes away.

GUY ASAPH: I wouldn't take off that. I want to take the porches off. You take a foot and now you have a four-foot bathtub and it doesn't work.

TIM HUGHES: So give me some insight as to how I'm fashioning this motion. I'm speaking to the Variance that's written right here. And I don't see anything here that says, you know, anything about the additional FAR. That's on the dimensional form?

The Chair would move that a Variance be

granted at 13-15 Avon Street to construct an addition to a non-conforming structure to get an two additional units to preserve the existing porch, bay and roof height and an increase of 103 feet in FAR according to the plans submitted by Mark Boyes-Watson Architects and dated 5/24/10 initialed by the Chair.

The literal enforcement of the provisions of the Ordinance would involve substantial hardship --

MAHMOOD FIROUZBAKHT: Sorry, Mr. Chair. We don't have an increase of FAR.

MARK BOYES-WATSON: It's relocation.

TIM HUGHES: Oh, relocation of FAR?

MAHMOOD FIROUZBAKHT: So you were 103 square feet over --

MARK BOYES-WATSON: As was the original.

MAHMOOD FIROUZBAKHT: The Ordinance

requirement was as opposed to increasing FAR.

MARNEY CLIPPINGER: Can I ask something before a vote is taken or is that completely out of order?

TIM HUGHES: I don't know that it's going to make any difference.

MARNEY CLIPPINGER: I'm curious as to what happened about all of your concerns about the neighbors. Because all of this seems to be about square footage and roofs and that kind of thing. And there was some concern expressed earlier about what the neighbors felt, and I'm just -- it seems to have completely gone out the window.

TIM HUGHES: My answer is going to be much longer than it is for me to do this motion and it's not going to change the fact that I'm going to make this motion. And I'm not sure it will change the outcome of the vote either. But I can't speak for everybody on the Board.

MAHMOOD FIROUZBAKHT: I do hope,

though, that regardless of our vote that there will be a meeting between the developer and the neighbors to discuss the issues.

TIM HUGHES: Continuing. A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise to the petitioner for the following reasons:

Because of the historical characteristics of the existing building, it has been requested by the City of Cambridge Historic Commission that existing non-conforming elements of the structure be retained. It's desirable to maintain certain non-conforming aspects of the existing structure as of right proposal is not possible.

The hardship is owing to the following circumstances:

Relating to the soil conditions, shape or topography of such land or structures and

especially affecting such land or structures would not affect in general the zoning district in which it is located for the following reasons:

Hardship is owing to the configuration of the existing building. The historic value of the existing building as determined by the sit of Cambridge Historic Commission, and the configuration of the existing lot with front and rear setback requirements rendering a larger portion of the lot unbuildable.

Desirable relief may be granted without either substantial detriment to the public good for the following reasons:

The relief requested allows the critical aspects of this historically significant structure to be preserved and restored without increasing the gross floor area or building volume on the lot. The three-family structure is permitted on the

lot.

And relief maybe granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

The relief requested allows the critical aspects of this historically significant structure to be preserved and restored and there will be no increase in gross floor area or building volume and existing non-conforming right side yard setback of the existing structure will be reduced to a degree of non-conformity -- will be reduced in degree of non-conformity. And proposed use as a three-family residence as of right in this district.

All those in favor of granting the Variance --

TAD HEUER: Can I make a few additional points perhaps?

TIM HUGHES: Sure.

TAD HEUER: That additionally finding of hardship be made based on shape and the size of the lot, it's an L-shaped lot, not a normal building size lot.

Additionally, due to the shape of the structure, which affects this structure but not those in the zoning district generally, but it's a preexisting non-conforming use as to height and as to front yard setback that those are the specific historic features of the building that should be preserved and there's no advantage to be gained by removing six inches from the front porch or two and a half feet, plus or minus from the mansard roof which would allow the project as proposed to be built as of right.

And that reducing -- limiting those features to allow as-of-right project would not be in the best interest of the neighborhood or the city. In addition, that it reduce -- this proposal reduces the bulk

the building by shifting it more equitable use of the lot as it stands and it also reduces or eliminates the current use with which the school institutional use and converts it back into a residential use which is more in keeping with the character the neighborhood.

TIM HUGHES: The Chair appreciates those additions to the motion.

TAD HEUER: Additionally, regarding the deck, would it be possible to make a motion that plans approved as they are with the exception of the rear deck and the third unit which would be enclosed to shield it from the south neighbor?

TIM HUGHES: I don't think we have to change the plans in order for that to happen?

GUY ASAPH: I'll make that deck go away. It will just --

TAD HEUER: Make it go away would change the plan.

MAHMOOD FIROUZBAKHT: Yes, I think

that's a difficult one. It's unlike the bays, were simply require the foundation be no built underneath. A don't know if we can approve that if we don't have plans for it.

TIM HUGHES: And no we don't as a policy approve something that's not specifically in the plans.

TAD HEUER: I understand that.

MAHMOOD FIROUZBAKHT: We can rely on the good will of the applicant to take care of that deck as appropriate.

MARK BOYES-WATSON: Well, we would -- were it come to that for sure, and also that Variance has to be able to understand what it's supposed to be.

SEAN O'GRADY: Yes.

TAD HEUER: I understand that, too.

SEAN O'GRADY: Okay. I'm just -- I'm just sitting here.

TIM HUGHES: Does that part of the motion go in or stay out?

TAD HEUER: It goes out.

TIM HUGHES: Let's dump it. And we'll vote on the motion as stated with your additions.

MAHMOOD FIROUZBAKHT: And on the condition that the three bays that would have triggered a setback relief will not have foundations built underneath. That is a condition to the decision.

TIM HUGHES: Correct.

TAD HEUER: So therefore no side setback relief was being requested or granted for this motion.

MAHMOOD FIROUZBAKHT: No side or rear setback.

TAD HEUER: Right.

TIM HUGHES: All those in favor of the motion for the Variance, say "Aye."

(Aye.)

TIM HUGHES: That's three in favor.

(Hughes, Firouzbakht and Heuer.)

TIM HUGHES: Opposed.

(Show of hands.)

TIM HUGHES: Two opposed. The motion doesn't carry.

(Sullivan and Scott opposed.)

(Whereupon, at 11:10 p.m., the meeting adjourned.)

**C E R T I F I C A T E****COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
hereinbefore set forth is a true and accurate  
transcription of my stenographic notes to the  
best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set  
my hand this 9th day of June 2010.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
License No. 147703

My Commission Expires:  
April 23, 2015

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